

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY

[R06-31]

PREAMBLE

1. Sections Affected

R4-24-101
R4-24-103
R4-24-104
R4-24-106
R4-24-107
R4-24-201
R4-24-202
R4-24-203
R4-24-204
R4-24-204
R4-24-205
R4-24-205
R4-24-206
R4-24-207
R4-24-208
R4-24-209
Table 1
Exhibit 1

Rulemaking Action

Amend
Amend
Amend
Repeal
Re number
Amend
Amend
Amend
Re number
New Section
Repeal
Re number
Amend
Re number
Amend
Amend
Amend
Amend
Amend
Repeal

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 32-2003(5)

Implementing statutes: A.R.S. §§ 32-2002, 32-2003, 32-2021(C), 32-2022, 32-2024, 32-2025, 32-2027, 32-2028, 32-2029, 41-1072 through 41-1079

3. A list of all previous notices appearing in the *Register* addressing the proposed rule:

Notice of Rulemaking Docket Opening: 12 A.A.R. 227, January 27, 2006

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Heidi Herbst Paakkonen, Executive Director
Address: 1400 W. Washington, Suite 230
Phoenix, AZ 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093
E-mail: heidi.herbst-paakkonen@ptboard.state.az.us

Notices of Proposed Rulemaking

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Board is revising its rules in Articles One and Two consistent with its five-year-review report approved by the Governor's Regulatory Review Council in October 2004. The Board will be making rule changes in Articles Three, Four, and Five in subsequent rulemakings. In this rulemaking, the Board is amending definitions and adding definitions to allow for consistent interpretation of the rules. Provisions are being amended or added for Board officers and access to Board records. Application requirements for a renewal license or certificate and an initial physical therapist license and physical therapist assistant certificate are being clarified, including applications by individuals educated in the United States and applications by individuals educated outside the United States. The provisions for reinstatement, interim permits, and supervised clinical practice are being amended. The Interim Period Evaluation Form is being repealed because an applicant will be evaluated using the Physical Therapist Clinical Performance Instrument or the Physical Therapist Assistant Clinical Performance Instrument. The time-frame provisions for Board action on applications are being amended. The fee provisions are being moved from Article Two to Article One.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Board did not review or rely on any study.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Annual cost/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

The Board bears moderate costs for writing rules to implement its statutes and related economic, small business, and consumer impact statement and mailing the new rules to interested persons.

Increasing the substantive review time-frame from 15 days to 30 days for a regular license, license by endorsement, physical therapist assistant certificate, foreign-educated applicant, and foreign-educated interim permit/supervised clinical practice approval of facility benefits the Board. Because the Board holds its meetings on the fourth Tuesday of every month, the time-frame sometimes falls outside the 30 days required for a substantive review of an application, which requires the Board to hold a special meeting. The cost for a special meeting ranges from minimal to moderate.

The overall economic impact of the rules is expected to be minimal for a physical therapist applicant and licensee, minimal for a certificate holder applicant and certificate holder, minimal for an onsite supervisor, and minimal on a credential evaluation agency or business that hires physical therapists or physical therapist assistants with the benefits outweighing the costs.

The Board does not anticipate that R4-24-202 will increase costs to a licensee requesting reinstatement. Due to changes in A.R.S. § 32-2028, effective August 25, 2004, a certificate-holder may request reinstatement of a certificate. A certificate holder will bear minimal costs as a result of R4-24-202.

The requirements in R4-24-203 for a foreign-educated applicant may result in minimal costs for obtaining a translation of a document required in if the document is not written in English.

Because the English proficiency examinations administered by ETS have changed, the Board is adding the iBT examination. The Board will continue to honor the ETS cores of those persons who took the examinations required in R4-25-203 before the end of September 2005.

The legislation that became effective August 25, 2004 also changed A.R.S. § 32-2025 to allow the Board to issue an interim permit to an applicant who was educated in the United States and determined by the Board to lack the competence to work as a physical therapist assistant. R4-24-204 requires a physical therapist assistant interim permit holder to be evaluated according to the Physical Therapist Assistant Clinical Performance Instrument, which contains basic standards for safely and responsibly work as a physical therapist assistant. The costs for a physical therapist assistant to conform with the standards should be minimal.

The Board is repealing Exhibit 1, Interim Period Evaluation Form and adopting the American Physical Therapy Association's (APTA) Physical Therapist Clinical Performance Instrument (Instrument) for evaluating a physical therapist interim permit holder in R4-24-204. The Board believes that most interim period holders are currently being evaluated consistent with the APTA criteria. The consistent requirements should benefit an interim permit holder who should not incur additional costs to meet the requirements in R4-24-204.

Credential evaluation agencies continue to benefit from the requirements in R4-24-203 that foreign-educated applicants be evaluated for substantial educational equivalency.

An applicant for a license and an applicant for a certificate benefit from the notice provided in R4-24-205 of the score required for successful passage of a jurisprudence examination.

Notices of Proposed Rulemaking

The language in R4-24-208 is being amended to consolidate the requirements for renewal of licenses and certificates and clarify language. Because a licensee and certificate are already required to meet the requirements, the rule should not increase costs for them.

A business, including a small business, should not incur additional expense because of the rules, but benefit from clarification of rule requirements. A consumer of physical therapy services benefits from the rules because the rules assure that only qualified persons practice physical therapy.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Heidi Herbst Paakkonen, Executive Director
Address: 1400 W. Washington, Suite 230
Phoenix, AZ 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093
E-mail: heidi.herbst-paakkonen@ptboard.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding will be conducted by the Board at the following location in the state for the purpose of taking oral and written testimony on the proposed rules from members of the public.

Date: April 13, 2006
Time: 9:00 a.m.
Location: 1400 W. Washington, Room B1
Phoenix, AZ 85007

The public record on the proposed rulemaking will close at 5:00 p.m. on April 13, 2006.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

| Rule | Incorporation by reference |
|---------------|--|
| R4-24-101(11) | A Coursework Evaluation Tool for Persons Who Received Their Physical Therapy Education Outside the United States, published 2003 |
| R4-24-101(27) | Physical Therapist Assistant Clinical Performance Instrument, published March 1998 |
| R4-24-101(28) | Physical Therapist Clinical Performance Instrument, published December 1997 |
| R4-24-101(31) | Code of Ethics, amended June 2000 and the accompanying Guide for Professional Conduct, amended January 2004 |

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-24-101. Definitions
R4-24-103. Board Duties Officers
R4-24-104. Board Confidential Information and Records; Access
R4-24-106. Approval of Credential Evaluation Agencies Repealed
~~R4-24-206. R4-24-107. Fees~~

Notices of Proposed Rulemaking

ARTICLE 2. LICENSING PROVISIONS

Section

- R4-24-201. Application for a Physical Therapist License
R4-24-202. ~~Application for Reinstatement of License or Certificate~~
R4-24-203. Foreign-educated Applicants ~~Applicant Requirements; Supervised Clinical Practice~~
R4-24-204. ~~Supervised Clinical Practice~~
R4-24-205. ~~Renewal of License and Address Changes Repealed~~
R4-24-204-R4-24-205. Examination Scores
R4-24-206. ~~Fees Renumbered~~
R4-24-207. Application for Physical Therapist Assistant Certificate
R4-24-208. ~~Renewal of Certificate and Address Changes~~ License or Certificate Renewal; Address Change
R4-24-209. Time-frames for Board Approvals
Table 1. Time-frames (in days)
Exhibit 1. ~~Interim Period Evaluation Form Repealed~~

ARTICLE 1. GENERAL PROVISIONS

R4-24-101. Definitions

In addition to the definitions in A.R.S. § 32-2001, in this Chapter:

1. "Accredited" means accredited by a nationally recognized accreditation organization.
- ~~1-2.~~ "Accredited educational program" means a physical therapist or physical therapist assistant educational program that is accredited by:
 - a. ~~the~~ The Commission on Accreditation of Physical Therapy Education (CAPTE), or
 - b. ~~an~~ An agency recognized as qualified to accredit physical therapist or physical therapist assistant programs by either the U.S. Department of Education or the Council on Higher Education Accreditation (CHEA) at the time of the applicant's graduation.
- ~~2-3.~~ "Applicant" means an individual seeking an initial or renewal license, initial or renewal certificate, or interim permit, or reinstatement from the Board.
- ~~4.~~ "APTA" means the American Physical Therapy Association.
- ~~3-4.~~ No change
- ~~5.~~ No change
- ~~6.~~ "College Board" means an association composed of schools, colleges, universities, and other educational organizations across the United States that is responsible for the development of assessment tests that are used to provide college credit or for college placement.
- ~~7.~~ "College level examination program" means services offered by the College Board for an individual to demonstrate college-level achievement by taking an examination approved by the College Board.
- ~~6-8.~~ No change
- ~~7-9.~~ "Continuing competence" means maintaining the professional skill, knowledge, and ability of a physical therapist by successfully completing 20 contact hours of scholarly and professional activities during each compliance period related to physical therapy.
- ~~10.~~ "Course" means an organized subject matter in which instruction is offered within a specified period of time.
- ~~11.~~ "Course evaluation tool" means A Coursework Evaluation Tool for Persons Who Received Their Physical Therapy Education Outside the United States, Fourth Edition, published by the Federation of State Boards of Physical Therapy, 2003, 509 Wythe Street, Alexandria, VA, 22314, incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments.
- ~~8-12.~~ "Credential evaluation" means a written appraisal by an agency approved by the Board assessment of a foreign-educated applicant's general and professional educational course work previously completed by an applicant.
- ~~13.~~ "Credential evaluation agency" means an organization that evaluates a foreign-educated applicant's education and provides recommendations to the Board about whether the applicant's education is substantially equivalent to physical therapy education provided in an accredited educational program.
- ~~9-14.~~ No change
- ~~10-15.~~ No change
- ~~16.~~ "ETS" means Educational Testing Services, an organization that provides educational learning and assessment services, including the Test of English as a Foreign Language Program.
- ~~11-17.~~ "Facility" means a building where:
 - a. A physical therapist is engaged in the practice of physical therapy;
 - b. An applicant, licensee, or certificate holder is engaged in a supervised clinical practice; or
 - c. A physical therapist assistant performs physical therapy-related tasks delegated by an onsite supervisor.

Notices of Proposed Rulemaking

- ~~12-18.~~ "Foreign-educated applicant" means ~~a physical therapist~~ an individual who graduated from a physical therapist educational program outside the United States, Puerto Rico, District of Columbia, or a U.S. territory.
- ~~13-19.~~ No change
20. "Good moral character" means the applicant has not taken any act that is grounds for disciplinary action against a licensee or certificate holder under A.R.S. § 32-2044.
21. "Hour" means 60 minutes.
22. "iBT" means internet based TOEFL.
- ~~14-23.~~ "National disciplinary database" means the disciplinary database of ~~the Federation of State Boards of Physical Therapy or the U.S. Department of Health and Human Services' Health Integrity and Protection Data Base of previous or current disciplinary actions taken against a licensed physical therapist or certified physical therapist assistant by state licensing agencies.~~
24. "Lapsed" means expired because of failure to renew a license or certificate.
- ~~15-25.~~ No change
26. "Onsite supervisor" means a physical therapist who provides onsite supervision as defined in A.R.S. § 32-2001.
27. "Physical Therapist Assistant Clinical Performance Instrument" means the document used to assess an individual's knowledge, skills, and attitudes to determine the individual's readiness to work as a physical therapist assistant that is published by the American Physical Therapy Association, Division of Education, March 1998, 111 North Fairfax Street, Alexandria, VA 22134-1488 and incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments.
28. "Physical Therapist Clinical Performance Instrument" means the document used to assess an individual's knowledge, skills, and attitudes to determine the individual's readiness to practice physical therapy that is published by the American Physical Therapy Association, Division of Education, December 1997, 111 North Fairfax Street, Alexandria, VA 22134-1488 and incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments.
29. "Physical therapy services" means any of the actions stated in the definition of practice of physical therapy in A.R.S. § 32-2001.
30. "Qualified translator" means an individual, other than an applicant, who is:
- An officer or employee of an official translation bureau or government agency.
 - A professor or instructor who teaches a translated language in an accredited college or university in the United States.
 - An American consul in the country where the translated document is issued or another individual designated by the American counsel in the country where the translated document is issued, or
 - A consul general or diplomatic representative of the United States or individual designated by the consul general or diplomatic representative.
- ~~16-31.~~ "Recognized standards of ethics" means the Code of Ethics (amended June 1999 2000) and the accompanying Guide for Professional Conduct (amended January 1999 2004) of the American Physical Therapy Association, 1111 North Fairfax Street, Alexandria, VA 22314-1488, which is incorporated by reference and on file with the Secretary of State Board. This incorporation includes no later editions or amendments.
32. "Supervised clinical practice" means the period of time a physical therapist is engaged in the practice of physical therapy or a physical therapist assistant is engaged in work as a physical therapist assistant after being issued an interim permit by the Board.
33. "TOEFL" means test of English as a foreign language.
34. "Week" means the period beginning on Sunday at 12:00 a.m. and ending the following Saturday at 11:59 p.m.

R4-24-103. Board Duties Officers

~~Officers of the~~ The Board shall elect a president, vice-president, and secretary. ~~The officers shall be elected at the its first regular Board meeting of the Board each year by majority vote of the Board.~~

- The president shall preside at all Board meetings;
- ~~if~~ When the president is ~~disqualified or unable to attend~~ preside at a Board meeting, the vice-president shall preside ~~at the meeting.~~

R4-24-104. Board Confidential Information and Records; Access

- ~~A.~~ The Board shall maintain a public file of all records that are not confidential by law for every licensee and certificate holder.
- ~~B.~~ The Board shall not make a licensee's educational records or social security number available to the public. The home address and telephone number of a licensee shall not be made available to the public unless the home address and telephone number are the only address and telephone number of record.
- ~~C.~~ The Board shall keep confidential, and shall not make available to the public, patient records, including clinical records, files, any other report or oral statement relating to diagnostic findings or treatment, and any information, records, or

Notices of Proposed Rulemaking

reports kept by the Board as a result of an investigation by the Board.

- D.** The Board shall make copies of the public record of the Board available to any person at a cost determined by the Board. Unless authorized by the Board, a person shall not remove Board records from the Board premises except for an official Board meeting held at another site or for archival purposes. A person shall request the permission of the Board's Executive Director prior to examining, inspecting, or obtaining copies of a public record. The Board may make a public record available electronically.

The following information or record containing this information is confidential and is not provided to the public by the Board:

1. An applicant's, licensee's, or certificate holder's:
 - a. Social Security number;
 - b. Home address or home telephone number unless the address or telephone number is the only address or telephone number of record;
 - c. Credential evaluation report, education transcript, grades, or examination scores;
 - d. National physical therapist or physical therapist assistant examination score;
 - e. Diagnosis and treatment records; and
2. According to A.R.S. § 32-2045, information or a document related to investigations by the Board.

R4-24-106. ~~Approval of Credential Evaluation Agencies~~ Repealed

- A.** The Board shall approve an agency to perform a credential evaluation of a foreign-educated applicant based upon:
1. ~~The Recommended Guidelines for Reviewing Credentialing Agencies (amended February 1997) of the Federation of State Boards of Physical Therapy, 509 Wythe Street, Alexandria, VA, 22314, which is incorporated by reference and on file with the Secretary of State. This incorporation by reference contains no later editions or amendments.~~
 2. ~~The agency agreement to use the Course Work Evaluation Tool (amended March 1999) of the Federation of State Boards of Physical Therapy, 509 Wythe Street, Alexandria, VA, 22314, which is incorporated by reference and on file with the Secretary of State. This incorporation by reference contains no later editions or amendments.~~
 3. ~~The agency agreement to evaluate the areas of both general and professional education curriculum as determined by the Board requirements in R4-24-203(A).~~
- B.** ~~A credential evaluation agency that is denied approval may request a hearing in accordance with A.R.S. § Title 41, Chapter 6, Article 10.~~

~~R4-24-206, R4-24-107, Renumbered Fees~~

No change

1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change

ARTICLE 2. LICENSING PROVISIONS

R4-24-201. Application for a Physical Therapist License

- A.** An applicant for a physical therapist license shall submit to the Board an application packet that ~~contains~~ includes:
1. ~~A completed national physical therapist examination form for computerized testing provided by the Board, if applicable;~~
 2. 1. An application form provided by the Board; that is signed; and dated; and verified by the applicant and notarized and ~~that~~ contains:
 - a. The applicant's name, business and residential addresses, telephone number, birth date, and ~~social~~ Social Security number;
 - b. No change
 - c. The name and address of the university or college where the applicant completed an accredited educational program; and dates of attendance; ~~and an official transcript with date of completion;~~
 - d. No change
 - e. Professional employment history for the past ~~5~~ five years, including the name, address, and telephone number for

Notices of Proposed Rulemaking

each ~~employer~~ place of employment, job title, and description of the work done, and explanation of any breaks in employment, if applicable;

f. No change

g. No change

h. A statement of whether the applicant has ever been found guilty of or has a complaint, allegation, or charge currently pending for any action by a professional licensing board in any jurisdiction of the United State or foreign country and if so, an explanation;

A statement of whether the applicant is currently or ever has been under investigation, suspension, or restriction by a professional licensing board in any jurisdiction of the United States or foreign country for any act that occurred in that jurisdiction that would be subject to discipline under this Chapter and if so, an explanation;

i. No change

j. A statement of whether the applicant has committed any of the actions referenced in the definition of good moral character in R4-24-101;

~~j-k.~~ A statement of whether the applicant has ever had a malpractice judgment, ~~or~~ has a lawsuit currently pending for malpractice, or entered into a settlement from a malpractice suit and is so, an explanation;

~~k-l.~~ No change

~~l-m.~~ No change

~~m-n.~~ A statement of whether the applicant has, within the past 10 years, ~~abused~~ used alcohol, any illegal chemical substance, or prescription medications, that in any way has impaired or limited the applicant's ability to practice physical therapy with skill and safety and if so, an explanation;

~~n-o.~~ No change

~~o-p.~~ A statement of whether the applicant has ~~been diagnosed as having or is being treated for pedophilia, exhibitionism, voyeurism, or any other sexual behavior disorder and if so, an explanation~~ ever violated A.R.S. § 32-2044(10);

~~p-q.~~ A ~~sworn~~ statement by the applicant verifying attesting to the truthfulness of the information provided by the applicant;

~~3-2.~~ A passport photograph of the applicant no larger than 1 1/2 x 2 inches ~~and that was~~ taken not more than ~~6~~ six months before the date of the application; and

~~4.~~ A ~~completed~~ questionnaire covering Arizona statutes and rules pertaining to physical therapy provided by the Board; and

~~5-3.~~ A The fee required in ~~R4-24-206~~ R4-24-107.

B. No change

1. An official transcript or letter showing that the applicant ~~has~~ completed all requirements of an accredited educational program that includes the official seal of the university or college where the applicant completed the accredited educational program signed by and signature of the registrar of the university or college, ~~where the applicant completed the physical therapist educational program; and~~

2. Verification of passing a national examination in physical therapy as evidenced by an original notice of examination results; and

3. Verification of passing a jurisprudence examination as evidenced by an original notice of examination results.

C. In addition to the requirements in subsections (A) ~~(2)~~ (1) through (A) ~~(5)~~ (3) and subsection (B), an applicant for a physical therapist license by endorsement shall submit to the Board:

1. No change

2. A verification of each license, signed and dated by an official of the agency licensing the applicant, that includes the official seal of the licensing agency and all of the following:

a. The name ~~and address~~ of the applicant;

b. No change

c. No change

d. No change

e. No change

f. No change

~~D.~~ In addition to submitting the fee required by the Board and documents in subsection (A)~~(2)~~ through (A)~~(4)~~ and (B), a foreign-educated applicant shall submit to the Board proof of legal authorization to reside and seek employment in the United States or a U. S. Territory, and arrange to have directly submitted to the Board:

~~1.~~ A credentials evaluation report prepared within 1 year before the date of application;

~~2.~~ Verification of passing a national examination in physical therapy as evidenced by an original notice of examination; and

~~3.~~ Written documentation of authorization to practice without limitation issued by the authorizing body in the country where the professional education as physical therapist was received.

~~E.~~ An applicant who has twice failed the national examination shall submit a written plan for remediation to the Board before

Notices of Proposed Rulemaking

Board approval for subsequent testing.

~~F.D.~~ No change

R4-24-202. ~~Application for Reinstatement of License or Certificate~~

~~The Board shall require an applicant whose license lapsed more than 3 years before applying to demonstrate competence by serving an internship. If the license application is not denied for other reasons, the licensee shall serve an internship under a restricted license.~~

- ~~1. The internship under restricted license shall be under the supervision of by a physical therapist for not less than 160 hours nor more than 960 hours.~~
- ~~2. The internship shall be in a clinical setting that provides broad exposure to general physical therapy. The site shall be capable of providing experience in the activities identified on the Interim Period Evaluation Form attached as Exhibit 1. The supervising physical therapist shall complete the Interim Period Evaluation Form and submit it to the Board before the restricted licensee completes the internship.~~
- ~~3. A restricted licensee shall be granted an unrestricted license by the Board upon submission by the supervising physical therapist to the Board of an Interim Period Evaluation Form that indicates that all skills have been completed with an evaluation rating of "approved".~~
- ~~4. If the restricted licensee does not receive an "approved" rating on all skills on the Interim Period Evaluation Form before the end of the internship, additional remedial activities shall be required. The Board may require the restricted licensee to complete additional time in a supervised internship, take additional coursework, and pass an examination. An unrestricted license shall be granted following completion of the remedial activities. The Board shall deny an unrestricted license to any restricted licensee who fails to complete the remedial activities. The restricted licensee may appeal the denial of license under Title 41, Chapter 6, Article 10.~~

A. An applicant whose Arizona license or certificate lapsed for three consecutive years or less after the date of renewal of the license or certificate may apply for reinstatement of the license or certificate by submitting the application in R4-24-208 and the reinstatement fee and renewal fee required in R9-24-107.

B. An applicant whose Arizona license or certificate lapsed for more than three consecutive years after the date of renewal of the license or certificate may apply for reinstatement of the license or certificate by submitting the reinstatement fee and renewal fee in R4-24-107, and:

1. For an applicant educated in the United States requesting reinstatement of a license, the application in R4-24-201(A) and (B);
2. For a foreign educated applicant requesting reinstatement of a license, the application in R4-24-203; or
3. For an applicant requesting reinstatement of a certificate, the application in R4-24-207(A) and (B).

C. If an applicant submits an application according to subsection (B), the Board shall require the applicant to demonstrate competency by doing one or more of the following:

1. Practice physical therapy or work as a physical therapist assistant under an interim permit that allows the applicant to participate in a supervised clinical practice.
2. Complete one or more courses relevant to the practice of physical therapy or the work of a physical therapist assistant.
3. Complete continuing competence requirements for the period of time of the lapsed license, or
4. Take and pass a jurisprudence examination or national examination.

R4-24-203. ~~Foreign-educated Applicants~~ Applicant Requirements, Supervised Clinical Practice

A. For a credential evaluation agency to determine that a foreign-educated applicant's education is substantially equivalent to the education provided to a physical therapist in an accredited educational program, the foreign-educated applicant shall have:

1. A minimum of a bachelor's degree in physical therapy;
2. Completed at least 120 semester credit hours, including at least 58 semester credit hours in college level general education and at least 61 semester credit hours in professional education;
3. A minimum grade of C or its equivalent in each professional education course; and
4. Earned all semester credit hours at a university or college.

A foreign-educated applicant shall meet the requirements in A.R.S. § 32-202(B) and the following:

1. The applicant shall comply with the requirements in R4-24-201.
2. The applicant shall ensure that a document required by R4-24-201 or this subsection is:
 - a. Submitted to the Board in English; or
 - b. Accompanied by an original English translation by a qualified translator if the document is submitted to the Board in a language other than English and includes an affidavit of accuracy by the qualified translator affirming:
 - i. The qualified translator has translated the entire document,
 - ii. The qualified translator has not omitted anything from or added to the translation, and
 - iii. The translation is true and accurate.

Notices of Proposed Rulemaking

3. To meet the requirements in A.R.S. § 32-2022(B)(4), the applicant shall state on the application form whether the applicant's practice as a physical therapist was limited in the country where the professional education occurred. If the applicant's practice was limited in the country where the professional education occurred, the applicant shall submit to the Board documentation of the limitation, or arrange to have documentation of limitation sent directly to the Board, that includes:
 - a. The name, address, and telephone number of the entity that limited the applicant's practice of physical therapy;
 - b. A description of the action or lack of action that led to the limitation on the applicant's practice as a physical therapist; and
 - c. A description of the limitation on the applicant's practice of physical therapy.
 4. If English is not the native language of the foreign-educated applicant, to meet the requirements in A.R.S. § 32-2022(B)(6), the applicant shall pass either of the following tests and ensure that the test scores are sent directly to the Board by the testing entity:
 - a. If the applicant passed the following ETS tests before September 30, 2005:
 - i. TOEFL with a score of 560 or more if a paper based test or with a score of 220 or more if a computer based test;
 - ii. Test of Spoken English with a score of 50 or more; and
 - iii. Test of Written English with a score of 4.5 or more; or
 - b. After September 30, 2005, the iBT with an overall test score of a minimum of 100 and the following sections:
 - i. Writing section with a minimum score of 25,
 - ii. Speaking section with a minimum score of 25,
 - iii. Reading section with a minimum score of 25, and
 - iv. Listening comprehensive section with a minimum score of 25.
 5. To demonstrate that the applicant meets uniform criteria for educational requirements according to A.R.S. § 32-2022(E)(3), the applicant shall undergo a credential evaluation to determine that the applicant meets the requirements in the course evaluation tool and arrange to have a credential evaluation report, prepared within 18 months from the date of the application, sent directly to the Board by the credential evaluation agency.
 6. To meet the requirements in A.R.S. § 32-2022(B)(5), the applicant shall obtain a work visa to reside and seek employment in the United States issued by the Bureau of Citizenship and Immigration Services and submit a copy of the work visa to the Board.
- B.** A foreign educated applicant shall arrange to have original documentation, including an official transcript or letter signed by the registrar of the university or college stating that the applicant has completed all requirements of a physical therapist educational program, sent directly to the credential evaluation agency. All documentation shall be in English or accompanied by a verified English translation. Following review, the credential evaluation agency shall notify the Board of the results.
- After receiving a credential evaluation report from a credential evaluation agency, the Board:
1. If the credential evaluation report does not establish that the education obtained by the foreign-educated applicant is substantially equivalent to the education required of a physical therapist in an accredited education program, may require the applicant to:
 - a. Complete one or more university or college courses and obtain a grade of C or better in each course;
 - b. Complete a college level examination program; or
 - c. If an applicant for a license, complete one or more continuing competence courses.
 2. Shall issue, within the time-frames stated in Table 1, an interim permit to complete a supervised clinical practice to the applicant if:
 - a. The applicant was required to meet one or more of the requirements in subsection (B)(1) and completes the requirements; or
 - b. The credential evaluation report establishes that the education obtained by the foreign-educated applicant is substantially equivalent to the education required of a physical therapist in an accredited education program; and
 - c. The applicant has passed the national examination and jurisprudence examination; and
 - d. The applicant meets the requirements in A.R.S. Title 32, Chapter 19 and R4-24-201.
- C.** Following receipt of the educational credential evaluation by the Board, if an applicant has an educational deficiency, the applicant shall complete 1 of the following requirements as directed by the Board:
1. Application of college level program scores towards semester credit hours for a limited number of courses as determined by the Board; or
 2. Completion of college courses in the deficiency with a minimum grade average of C or its equivalent.
- D.** A foreign educated applicant for whom English is not the native language shall pass the following English proficiency examinations and arrange for the scores to be sent directly to the Board:
1. Test of English as a Foreign Language with a minimum score of 560;
 2. Test of Spoken English with a minimum score of 50; and
 3. Test of Written English with a minimum score of 4.5 or better.

Notices of Proposed Rulemaking

- ~~E.~~ A foreign-educated applicant shall complete all educational or course work requirements set by the Board before receiving an interim permit to begin a period of supervised clinical practice.
- ~~F.~~ A foreign-educated applicant for an interim permit shall submit the application required in R4-24-201.
- ~~G.~~ Under A.R.S. § 32-2025, the Board shall issue an interim permit to each qualified foreign-educated applicant bearing the:
 - 1. Name of the applicant;
 - 2. Date of issue; and
 - 3. Date of expiration.
- ~~H.~~ The supervised clinical practice period for a foreign-educated applicant shall be in a clinical setting that provides learning experience for an applicant that includes:
 - 1. Examining, evaluating, and testing persons who have mechanical, physiological, and developmental impairments, functional limitations and disabilities, or other health and movement-related conditions to determine a diagnosis, prognosis, and plan of therapeutic intervention; and
 - 2. Alleviating impairments and functional limitations by designing, implementing, and modifying therapeutic interventions.
- ~~I.~~ The supervised clinical practice shall provide a minimum of 20 hours per week of supervised practice for 180 days, or 40 hours per week for 90 days.
- ~~J.~~ To receive Board approval of the facility for clinical practice and of the supervisor for the supervised clinical practice period, an applicant shall submit to the Board:
 - 1. A written request for approval of the facility and supervisor, including the name of the facility, the name and license number of the supervisor, and a description of the physical therapy services provided at the facility;
 - 2. Evidence that within the requested facility the supervisor can observe and report on the applicant's evaluative, diagnostic, and intervention planning skills, and the applicant's provision of therapeutic interventions listed on the Board's Interim Period Evaluation Form, and that the facility has no current restriction by a state or federal government agency; and
 - 3. Evidence that the supervisor holds an unrestricted license to practice physical therapy in this state for the previous 2-year period and previous experience as a clinical education instructor.
- ~~K.~~ The Board shall consider the request for approval of a clinical practice facility at a regularly scheduled Board meeting and may request an interview with supervisor. Upon approval, the proposed supervisor shall sign a statement agreeing to act as supervisor and to fulfill the required supervisor obligation, and shall submit the statement to the Board.
- ~~L.~~ The clinical supervisor shall submit a report including the Board's Interim Period Evaluation Form before the end of the supervised practice.
- ~~M.~~ If the Board determines from the report submitted by the supervisor that all clinical learning experiences have not been completed by the applicant or that the Interim Period Evaluation Form indicates that all skills have not been completed with an evaluation rating of "approve", the Board shall require an additional 90 days of supervised clinical practice, not to exceed a total supervised clinical practice period of 270 days.
- ~~N.~~ The Board shall deny a license to an applicant who fails to meet the requirements of this Section or Arizona Revised Statutes, Title 32, Chapter 19. An applicant denied a license may request a hearing under Arizona Revised Statutes, Title 41, Chapter 6, Article 10.

R4-24-204. Supervised Clinical Practice

- A.** An interim permit holder shall complete a supervised clinical practice under onsite supervision.
- B.** Before an individual is issued an interim permit, the individual shall submit to the Board:
 - 1. A written request for Board approval of the facility where supervised clinical practice will take place that includes:
 - a. The name, address, and telephone number of the facility; and
 - b. A description of the physical therapy services provided at the facility; and
 - 2. The name of the individual who holds an unrestricted license to practice physical therapy in this state and agrees to provide onsite supervision of the individual.
- C.** The Board shall approve or deny a request made under subsection (B)(1):
 - 1. After assessing whether the facility provides the opportunity for an interim permit holder to attain the knowledge, skills, and attitudes to be evaluated according to the Physical Therapist Assistant Clinical Performance Instrument or Physical Therapist Clinical Performance Instrument; and
 - 2. According to the time-frames in Table 1.
- D.** An onsite supervisor shall:
 - 1. Observe the interim permit holder during the supervised clinical practice and:
 - a. Rate the interim permit holder's performance in each of the clinical performance criteria in the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument, including the dates and hours the onsite supervisor provided onsite supervision; and
 - b. Recommend the interim permit holder be licensed or complete further supervised clinical practice;
 - 2. Submit the completed Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical

Notices of Proposed Rulemaking

Performance Instrument to the Board no later than 30 days after the completion date of the supervised clinical practice.

E. After the Board receives the completed Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument, the Board:

- 1. May require the interim permit holder to complete additional onsite supervision under the interim permit if the additional onsite supervision does not cause the interim permit holder to exceed six months from the date the interim permit was issued and:**
 - a. The onsite supervisor does not approve one or more of the skills listed on the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument.**
 - b. The onsite supervisor recommends that the interim permit holder complete further supervised clinical practice, or**
 - c. The Board determines that the interim permit holder has not met the requirements in A.R.S. Title 32, Chapter 19 and this Chapter.**
- 2. If the interim permit holder meets all of the requirements in A.R.S. Title 32, Chapter 19 and this Chapter, shall issue:**
 - a. A license to an applicant for a license or licensee, or**
 - b. A certificate to an applicant for a certificate or certificate holder.**
- 3. If the applicant, licensee, or certificate holder does not meet all of the requirements in A.R.S. Title 32, Chapter 19 and this Chapter, shall deny:**
 - a. A license to an applicant for a license or licensee, or**
 - b. A certificate to an applicant for a certificate or certificate holder.**

F. An applicant who has been denied a license or certificate may request a hearing under A.R.S. Title 41, Chapter 6, Article 10.

R4-25-205. ~~Renewal of License and Address Changes Repealed~~

A. A licensee shall submit an application to renew a license to practice physical therapy on a form provided by the Board on or before August 31 of even numbered years and shall provide the following information for the license period immediately preceding the renewal application:

- 1. A statement of whether the licensee has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, an explanation;**
- 2. A statement of whether the licensee has had an application for a professional or occupational license, certificate or registration, other than a driver's license denied, rejected, suspended, or revoked by any jurisdiction of the United States or foreign country and if so, an explanation;**
- 3. A statement of whether the licensee has been found guilty of or has a complaint, allegation, or charge currently pending for any action by a professional licensing board in any jurisdiction of the United States or foreign country and if so, an explanation;**
- 4. A statement of whether the licensee has been the subject of disciplinary action by a professional association or post-secondary educational institution;**
- 5. A statement of whether the licensee has had a malpractice judgment against the licensee or has a lawsuit currently pending for malpractice and if so, an explanation;**
- 6. A statement of whether the licensee is currently more than 30 days in arrears for payment required by a judgment and order for child support in Arizona or any other jurisdiction;**
- 7. A statement of whether the licensee has any impairment to the licensee's cognitive, communicative, or physical ability to engage in the practice of physical therapy with skill and safety and if so, an explanation;**
- 8. A statement of whether the licensee has abused alcohol, any illegal chemical substance, or prescription medications, that in any way has impaired or limited the licensee's ability to practice physical therapy with skill and safety and if so, an explanation;**
- 9. A statement of whether the licensee has been diagnosed as having or is being treated for any psychiatric disorder which includes, but is not limited to, bipolar disorder, schizophrenia, or paranoia, or other psychotic disorder that in any way has impaired or limited the licensee's ability to practice physical therapy with skill and safety and if so, an explanation;**
- 10. A statement of whether the licensee has been diagnosed as having or is being treated for pedophilia, exhibitionism, voyeurism, or any other sexual behavior disorder and if so, an explanation;**
- 11. Beginning in the year 2002, a statement of whether the licensee has completed the 20 contact hours of continuing competence for the previous compliance period as required in R4-24-401, and**
- 12. A sworn statement verifying the truthfulness of the information provided by the licensee.**

B. Failure of the Board to inform a licensee of license expiration does not excuse a licensee's non-renewal or untimely renewal.

C. A licensee shall submit a license renewal fee to the Board by mail or in person. The fee shall be paid by cashier's check, money order, or personal check.

Notices of Proposed Rulemaking

- ~~D.~~ The Board shall deny a license renewal to a licensee who fails to comply with renewal requirements. A person denied renewal of license may request a hearing under A.R.S. § Title 41, Chapter 6, Article 10.
- ~~E.~~ The Board shall mail a receipt and registration card to each licensee who renews a license showing the named licensee has a current and valid license.
- ~~F.~~ A licensee shall notify the Board, in writing, within 30 days of a change of address to be used by the Board.

~~R4-24-204.~~ **R4-24-205. Examination Scores**

- A. No change
- B. No change
- C. In addition to the requirements in subsections (A) and (B), to be licensed as a physical therapist or certified as a physical therapist assistant, an applicant shall obtain a scaled score of 600 or more based on a scale ranging from 200 to 800 on a jurisprudence examination.

R4-24-206. Fees Renumbered

R4-24-207. Application for Physical Therapist Assistant Certificate

- A. An applicant for an original physical therapist assistant certificate shall submit to the Board an application packet that ~~contains~~ includes:
 - ~~1. A completed national physical therapist assistant form for computerized testing provided by the Board office, if applicable;~~
 - 2.1. No change
 - a. The applicant's name, business and residential addresses, telephone number, birth date, and ~~social~~ Social security number;
 - b. The name and address of the ~~school or college or university~~ where the applicant completed a ~~physical therapist assistant~~ an accredited educational program for physical therapist assistants, dates of attendance, and date of completion;
 - c. No change
 - d. No change
 - e. No change
 - f. ~~A statement of whether the applicant has ever been found guilty of or has a complaint, allegation, or charge currently pending for any action by a professional licensing board in any jurisdiction of the United States or foreign country and if so, an explanation;~~
A statement of whether the applicant is currently or ever has been under investigation, suspension, or restriction by a professional licensing board in any jurisdiction of the United States or foreign country for any act that occurred in that jurisdiction that would be subject to discipline under this Chapter and if so, an explanation;
 - g. No change
 - h. A statement of whether the applicant has committed any of the actions referenced in the definition of good moral character in R4-24-101;
 - ~~h.i.~~ No change
 - ~~i.i.~~ No change
 - ~~j.k.~~ A statement of whether the applicant has, within the past 10 years, ~~abused~~ used alcohol, any illegal chemical substance, or prescription medications, that in any way has impaired or limited the applicant's ability to participate in therapeutic interventions with skill and safety and if so, an explanation;
 - ~~k.l.~~ No change
 - ~~l.m.~~ No change
 - ~~m.n.~~ A statement of whether the applicant has ~~been diagnosed as having or is being treated for pedophilia, exhibitionism, voyeurism, or any other sexual behavior disorder and if so, an explanation~~ ever violated A.R.S. § 32-2044(10); and
 - ~~n.o.~~ No change
 - ~~3.2.~~ A passport photograph of the applicant no larger than 1 1/2 x 2 inches ~~and that was taken not more than 6~~ six months before the date of the application; and
 - ~~4. A completed questionnaire covering Arizona statutes and rules pertaining to physical therapy that has been provided by the Board; and~~
 - ~~5.3. A~~ The fee required in R4-24-206 R4-24-107.
- B. No change
 - 1. An official transcript or letter showing that the applicant ~~has~~ completed all requirements of an accredited educational program that includes the official seal of the school or college where the applicant completed the accredited educational program signed by and signature of the registrar of the school or college; where the applicant completed the physical therapist assistant educational program; and
 - 2. No change

Notices of Proposed Rulemaking

3. Verification of passing a jurisprudence examination as evidenced by an original notice of examination results; and
- C. In addition to the requirements in subsections (A) and (B), an applicant for a physical therapist assistant certificate by endorsement shall submit to the Board:
1. The name of the licensing or certifying agency of any jurisdiction in which the applicant is currently or has been previously licensed or certified; and
 2. A verification of license or certificate, signed and dated by an official of the agency licensing or certifying the applicant, that includes the official seal of the licensing or certifying agency and all of the following:
 - a. The name of the applicant;
 - b. The license or certificate number and date of issuance;
 - c. The current status of the license or certificate;
 - d. The expiration date of the license or certificate;
 - e. A statement of whether the applicant was ever denied a license or certificate by the agency and if so, an explanation; and
 - f. A statement of whether any disciplinary action is pending or has ever been taken against the applicant and if so, an explanation.

~~E.D.~~No change

R4-24-208. ~~Renewal of Certificate and Address Changes~~ License or Certificate Renewal; Address Change

- A. A licensee or certificate-holder shall submit a renewal application packet to the Board ~~renew a physical therapist assistant certificate on or before August 31 of an even-numbered year and shall provide the~~ that includes:
1. ~~the~~ The following information for the license or certificate period immediately preceding the renewal application:
 - a. The licensee's or certificate holder's:
 - i. Name;
 - ii. Home, business, and e-mail addresses; and
 - iii. Home and business telephone numbers.
 - ~~1-b.~~ A statement of whether the licensee or certificate holder has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, an explanation;
 - ~~2-c.~~ A statement of whether the licensee or certificate holder has had an application for a professional or occupational license, certificate, or registration, other than a driver's license, denied, rejected, suspended, or revoked by any jurisdiction of the United States or foreign country and if so, an explanation;
 - ~~3-d.~~ A statement of whether the certificate holder has been found guilty of or has a complaint, allegation, or charge currently pending for any action by a professional licensing board in any jurisdiction of the United States or foreign country and if, an explanation;
A statement of whether the licensee or certificate holder is currently or ever has been under investigation, suspension, or restriction by a professional licensing board in any jurisdiction of the United States or foreign country for any act that occurred in that jurisdiction that would be subject to discipline under this Chapter and if so, an explanation;
 - ~~4-e.~~ A statement of whether the licensee or certificate holder has been the subject of disciplinary action by a professional association or post-secondary institution;
 - ~~5-f.~~ A statement of whether the licensee or certificate holder has had a malpractice judgment against the licensee or certificate holder or has a lawsuit pending for malpractice and if so, an explanation;
 - ~~6-g.~~ A statement of whether the licensee or certificate holder is currently more than 30 days in arrears for payment required by a judgment and order for child support in Arizona or any other jurisdiction;
 - h. A statement of whether the licensee or certificate holder has adhered to the recognized standards of ethics;
 - i. A statement of whether the licensee or certificate holder has not committed any of the actions referenced in the definition of good moral character in R4-24-101;
 - j. A statement of whether the licensee or certificate holder has been the subject of any criminal investigation by a federal, state or local agency or had criminal charges filed against the licensee or certificate holder;
 - k. If a licensee, a statement of whether the licensee has:
 - i. Any impairment to the licensee's cognitive, communicative, or physical ability to engage in the practice of physical therapy with skill and safety and if so, an explanation;
 - ii. Used alcohol, any illegal chemical substance or prescription medicine, that in any way has impaired or limited the licensee's ability to practice physical therapy with skill and safety and if so, an explanation;
 - iii. Been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited the licensee's ability to practice physical therapy with skill and safety and if so, an explanation;
 - ~~7-l.~~ If a certificate holder, A a statement of whether the certificate holder has:
 - i. ~~any~~ Any impairment to the certificate holder's cognitive, communicative, or physical ability to participate in

Notices of Proposed Rulemaking

- ~~therapeutic interventions~~ work as a physical therapist assistant with skill and safety and if so, an explanation;
- ~~8-ii. abused~~ Used alcohol, any illegal chemical substance or prescription ~~medications~~ medicine, that in any way has impaired or limited the certificate holder's ability to ~~participate in therapeutic interventions~~ work as a ~~physical therapist assistant~~ with skill and safety and if so, an explanation;
- ~~9-iii. been~~ Been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited certificate holder's ability to ~~participate in therapeutic interventions~~ work as a ~~physical therapist assistant~~ with skill and safety and if so, an explanation; and
- ~~10.m.~~ A statement of whether the licensee or certificate holder has ~~been diagnosed as having or is being treated for pedophilia, exhibitionism, voyeurism, or any other sexual behavior disorder and if so, an explanation~~ ever violated A.R.S. § 32-2044(10);
- ~~11.2.~~ A sworn statement verifying ~~The signature of the applicant attesting to the truthfulness of the information provided by the licensee or certificate-holder; and~~
3. The fee required by the Board in R4-24-107.
- B. Failure of the Board to inform a licensee or certificate-holder of license or certificate expiration does not excuse a licensee's or certificate-holder's non-renewal or untimely renewal.
- C. ~~A certificate holder shall submit a certificate renewal fee to the Board by mail or in person. The fee shall be paid by cashier's check, money order, or personal check. The Board shall:~~
- ~~1. Approve or deny the application within the time-frames in R4-24 209 and Table 1, or~~
 - ~~2. Deny an application to an applicant who does not meet the requirements in A.R.S. § 32-2001 et seq or this Chapter.~~
- D. ~~The Board shall deny a certificate renewal to an applicant for renewal who fails to comply with a renewal requirement. A person licensee or certificate holder denied renewal of a license or certificate may request a hearing under A.R.S. § Title 41, Chapter 6, Article 10.~~
- ~~E. The Board shall mail a receipt and registration card to each certificate holder who renews a certificate showing the named certificate holder has a current and valid certificate.~~
- F. ~~E.~~ A licensee or certificate-holder shall notify send to the Board, in writing, within 30 days of a written notification of a change of address or telephone number of address to be used by the Board no later than 30 days after the date of the change of address or telephone number.

R4-24-209. Time-frames for Board Approvals

- A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the substantive review time-frame and overall time-frame. The overall time-frame and the substantive time-frame may not be extended by more than 25% of the overall time-frame.
- B. No change
1. The administrative completeness review time-frame begins:
 - a. ~~When the Board receives an application packet for approval to take the national physical therapist examination or national physical therapist assistant examination as required in A.R.S. §§ 32-2022 and 32-2024,~~
 - b. ~~When the Board receives notice of the results of a national physical therapist examination or national physical therapist assistant examination taken by an applicant as required in A.R.S. §§ 32-2022 and 32-2024 for approval or denial of a license or certificate,~~
 - e-a. When the Board receives an application packet for a an initial or renewal license or certificate, by endorsement under A.R.S. § 32-2023(A), or
 - d. ~~When the Board receives an application for approval or denial of a license for a foreign educated applicant,~~
 - b. When the Board receives a request for an interim permit and approval of a facility, or
 - c. When the Board receives an application for reinstatement.
 2. No change
 3. No change
 4. No change
- C. No change
1. No change
 2. The Board shall send a written notice of approval ~~to an applicant to take the national physical therapist examination or national physical therapist assistant examination or approval~~ of a license or certificate to an applicant who meets the qualifications in A.R.S. §§ 32-2001 through 32-2027 and ~~these rules~~ this Chapter.
 3. No change
- D. No change
1. No change
 2. No change
- E. No change
- F. No change

Notices of Proposed Rulemaking

~~G. An applicant shall send written notice to the Board within 30 days from the date of any change of applicant's address.~~

Table 1. Time-frames (in days)

| Type of Applicant | Type of Approval | Statutory Authority | Overall Time-frame | Administrative Completeness Time-frame | Substantive Review Time-frame |
|---|--|--------------------------------|-------------------------|--|-------------------------------|
| Regular License; Foreign-educated Applicant; Physical Therapist Assistant Certificate (R4-24-201, R4-24-205) | Approval to take an examination | A.R.S. § 32-2024 | 90 | 30 | 60 |
| Regular and Restricted Original License (R4-24-201 and R4-24-202) | License | A.R.S. §§ 32-2022, 32-2023 | 60 <u>75</u> | 30 | 30 <u>45</u> |
| License by Endorsement (R4-24-201) | License by Endorsement | A.R.S. § 32-2026 | 60 <u>75</u> | 15 <u>30</u> | 45 |
| Original physical Therapist Assistant Certificate (R4-24-205 <u>R4-24-207</u>) | Certificate | A.R.S. §§ 32-2022; 32-2023 | 60 <u>75</u> | 30 | 30 <u>45</u> |
| Foreign-educated (R4-24-201) | Interim Permit | A.R.S. § 32-2025 | 30 | 15 | 15 |
| Foreign-educated (R4-24-201, R4-24-203) | License | A.R.S. §§ 32-2022; 32-2025 | 60 <u>75</u> | 45 | 15 <u>30</u> |
| Foreign-educated and Supervised Clinical Practice (R4-24-201, R4-24-202, R4-24-203, R4-24-204) | Interim Permit and Approval of facility Facility and supervising physical therapist | A.R.S. § 32-2025(C) | 30 <u>60</u> | 15 <u>30</u> | 15 <u>30</u> |
| <u>Reinstatement (R4-24-202)</u> | <u>Reinstatement of License or Certificate</u> | <u>A.R.S. § 32-2028</u> | <u>30</u> | <u>15</u> | <u>15</u> |

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

EXHIBIT 1 Repealed
ARIZONA STATE BOARD OF PHYSICAL THERAPY
INTERIM PERIOD EVALUATION FORM

NAME: _____ **PERIOD FROM:** _____ **TO:** _____

SUPERVISOR: _____ **FACILITY:** _____

NOTE: ALL SKILL MUST BE APPROVED PRIOR TO END OF SUPERVISED PERIOD

| SKILL | APPROVED | OBSERVED NOT APPROVED | NOT OBSERVED | COMMENTS |
|--|-----------------|--------------------------------------|-------------------------|-----------------|
| PROFESSIONAL BEHAVIOR | | | | |
| 1. Demonstrates professional/ethical conduct | | | | |
| 2. Pursues professional development | | | | |
| 3. Manages time effectively | | | | |
| 4. Able to problem solve | | | | |
| COMMUNICATION | | | | |
| 5. Establishes therapeutic rapport with patient, families, etc. | | | | |
| 6. Communicates with patient and family | | | | |
| 7. Uses and interprets non-verbal communication with patients/family | | | | |
| 8. Responds appropriately to behavior/condition of patient | | | | |
| 9. Interacts with professionals/exchanges communication | | | | |
| 10. Uses supportive personnel effectively | | | | |
| 11. Makes appropriate documentation | | | | |
| EVALUATION | | | | |
| 12. Performs comprehensive evaluation | | | | |
| 13. Interprets evaluation properly | | | | |
| 14. Sets appropriate goals | | | | |
| 15. Plans discharge | | | | |
| 16. Analyzes posture | | | | |
| 17. Evaluates sensory status | | | | |
| 18. Analyzes gait | | | | |
| 19. Evaluates functional activities | | | | |
| 20. Assesses neuromuscular status | | | | |
| 21. Evaluates ROM | | | | |
| 22. Performs MMT | | | | |
| 23. Assesses need for orthotic devices | | | | |
| 24. Assesses and responds to physiologic status of patient | | | | |

Arizona Administrative Register / Secretary of State

Notices of Proposed Rulemaking

Exhibit 1 (continued)

| SKILL | APPROVED | OBSERVED- NOT- APPROVED | NOT- OBSERVED | COMMENTS |
|---|-----------------|--|--------------------------|-----------------|
| PROGRAM PLANNING & TREATMENT | | | | |
| 25. Plans and modifies treatment program | | | | |
| 26. Uses medical record | | | | |
| 27. Provides exercises without equipment | | | | |
| 28. Provides exercise with equipment | | | | |
| 29. Selects appropriate modalities | | | | |
| 30. Selects appropriate positioning/draping | | | | |
| APPLICATION OF TREATMENT SKILLS | | | | |
| 31. Cerv/lumbar tx | | | | |
| 32. Electrical stimulation | | | | |
| 33. Hydrotherapy | | | | |
| 34. Ultra Sound | | | | |
| 35. Massage; soft tissue mobilization | | | | |
| 36. Cryotherapy | | | | |
| 37. CPR | | | | |
| 38. Wound/Burn Care | | | | |
| 39. Infection control | | | | |
| 40. Safe body mechanics | | | | |
| 41. Manual therapy joint mobilization | | | | |
| 42. Neurological facilitation/inhibition | | | | |
| 43. Gait training | | | | |
| 44. Functional activity training | | | | |

I (agree) (disagree) with the above assessment of my clinical skills as a physical therapist.

Interim Permit Holder's Signature Date

- A. _____ I recommend that _____ be considered for licensure.
 B. _____ I recommend that _____ be considered for the next scheduled licensing examination.
 C. _____ I recommend extension of the Interim Permit for _____
 D. _____ Other: _____

Please return this form to the:
 Arizona State Board of Physical Therapy
 1400 West Washington, Suite 230
 Phoenix, Arizona 85007

Signature of Supervisor

Date

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

[R06-64]

PREAMBLE

- 1. Sections Affected**

| | |
|---------------------------|---|
| R9-22-701 R9-22-712.07 | <u>Rulemaking Action</u> Amend New Section |
|---------------------------|---|
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-2903.01(F)
Implementing statute: A.R.S. § 36-2905.02
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 696, March 3, 2006
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

| | |
|------------|---|
| Name: | Mariaelena Ugarte |
| Address: | AHCCCS Office of Legal Assistance 701 E. Jefferson, Mail Drop 6200 Phoenix, AZ 85034 |
| Telephone: | (602) 417-4693 |
| Fax: | (602) 253-9115 |
| E-mail: | AHCCCSRules@azahcccs.gov |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

As authorized in A.R.S. § 36-2905.02 promulgation of rule is necessary to describe how the supplemental payment or adjustment to tier rates for rural hospitals will be administered. Additionally, AHCCCS Administration proposes further amendments to this Chapter, making it more clear, concise, and understandable.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Milliman, USA update of cost study as of March 11, 2004, and the Evaluation of the AHCCCS Inpatient Hospital Reimbursement System in the report to the Joint Legislative Committee on the Implementation of Proposition 204 as of November 15, 2002, were used to arrive at equitable costs for rural hospitals. The study is on file and available for review at the Arizona Health Care Cost Containment Administration office at 701 E. Jefferson, Phoenix, AZ 85034.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

The rulemaking is anticipated to have a moderate economic impact on rural hospitals with less than 100 beds and minimal economic impacts on contractors and the AHCCCS Administration.
- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

| | |
|------------|---|
| Name: | Mariaelena Ugarte |
| Address: | AHCCCS Office of Legal Assistance 701 E. Jefferson, Mail Drop 6200 Phoenix, AZ 85034 |
| Telephone: | (602) 417-4693 |

Fax: (602) 253-9115

E-mail: AHCCCSrules@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site www.ahcccs.state.az.us the week of February 21, 2006. Please send written comments to the above address by 5:00 p.m., April 10, 2006. E-mail comments are accepted.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: April 10, 2006

Time: 10:00 a.m.

Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Gold Room

Nature: Public Hearing

Date: April 10, 2006

Time: 10:00 a.m.

Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701

Nature: Public Hearing

Date: April 10, 2006

Time: 10:00 a.m.

Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004

Nature: Public Hearing

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-22-701. Standard for Payments Related Definitions

R9-22-712.07. Rural Hospital Inpatient Fund Allocation

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-701. Standard for Payments Related Definitions

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:

“Accommodation” means room and board services provided to a patient during an inpatient hospital stay and includes all staffing, supplies, and equipment. The accommodation is semi-private except when the member must be isolated for medical reasons. Other types of accommodation include hospital routine medical/surgical units, intensive care units, and any other specialty care unit in which room and board are provided.

“Aggregate” means the combined amount of hospital payments for covered services provided within and outside the service area.

“AHCCCS inpatient hospital day or days of care” means each day of an inpatient stay for a member, beginning with the day of admission, including the day of death, but excluding the day of discharge, provided that all eligibility, medical necessity and medical review requirements are met.

“Ancillary department” means the department of a hospital that provides outpatient services and ancillary services, as described in the Medicare Provider Reimbursement Manual.

“APC” means the Ambulatory Payment Classification system under 42 CFR Part 419 used by Medicare for grouping clinically and resource similar procedures and services.

“Billed charges” means charges for services provided to a member that a hospital includes on a claim consistent with the rates and charges filed by the hospital with Arizona Department of Health Services (ADHS).

“Capital costs” means capital-related costs such as building and fixtures, and movable equipment as described in the Medicare Provider Reimbursement Manual.

“Cost-To-Charge Ratio” (CCR) means a hospital’s costs for providing covered services divided by the hospital’s charges for the same services. The CCR is the percentage derived from the cost and charge data for each revenue code provided to AHCCCS by each hospital.

“Covered charges” means billed charges that represent medically necessary, reasonable, and customary items of expense for AHCCCS-covered services that meet medical review criteria of AHCCCS or a contractor.

~~“Critical Access Hospital” is a hospital certified by Medicare under 42 CFR 485 Subpart F and 42 CFR 440.170(g).~~

“CPT” means Current Procedural Terminology, published and updated by the American Medical Association, which is a nationally accepted listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and provides a uniform language to accurately designate medical, surgical, and diagnostic services.

“Critical Access Hospital” is a hospital certified by Medicare under 42 CFR 485 Subpart F and 42 CFR 440.170(g).

“Date of eligibility posting” means the date a member’s eligibility information is entered into the AHCCCS Pre-paid Medical Management Information System (PMMIS).

“DRI inflation factor” means Global Insights Prospective Hospital Market Basket

“Encounter” means a record of a medically related service rendered by an AHCCCS registered provider to an AHCCCS member enrolled with a capitated Contractor on the date of service.

“Existing outpatient services” means a service provided by the hospital prior to the hospital filing an increase in its charge master, regardless of whether the service was explicitly described in the hospital charge master before filing the increase, or how the service was described in the charge master before filing the increase.

“Free Standing Children Hospital” means a separately standing hospital dedicated to provide the majority of services to children with at least 120 pediatric beds.

“Global Insights Prospective Hospital Market Basket” means the Global Insights CMS Hospital price index for prospective hospital reimbursement, which is published by Global Insights.

~~“ICU” means the intensive care unit of a hospital.~~

“HCPCS” means the Health Care Procedure Coding System, published and updated by Center for Medicare and Medicaid Services (CMS), which is a listing of codes and descriptive terminology used for reporting the provision of physician services, other health care services, other substances, equipment, supplies or other items used in health care services.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as defined under 45 CFR Part 162, which establishes standards and requirements for the electronic transmission of certain health information by defining codes sets used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

“ICU” means the intensive care unit of a hospital.

“Level I Trauma Center” means any acute care hospital that is defined under R9-22-2101(F).

“Medical education costs” means direct hospital costs for intern and resident salaries, fringe benefits, program costs, nursing school education, and paramedical education, as described in the Medicare Provider Reimbursement Manual.

“Medical review” means a clinical evaluation of documentation conducted by AHCCCS or a contractor for purposes of prior authorization, concurrent review, post payment review, or medical necessity. The criteria for medical review are established by AHCCCS or a contractor based on medical practice standards that are updated periodically to reflect changes in medical care.

“National Standard code sets” means codes that are accepted nationally in accordance with federal requirements under 45 CFR 160 and 45 CFR 164.

“New hospital” means a hospital for which Medicare Cost Report claim and encounter data are not available for the fiscal year used for initial ratesetting or rebasing.

“NICU” means the neonatal intensive care unit of a hospital that is classified as a Level II or Level III perinatal center by the Arizona Perinatal Trust.

“Non-IHS Acute Hospital” means a hospital that is not run by Indian Health Services and is not a free standing psych hospital, such as an IMD, that is paid via ADHS rates.

“Operating costs” means an AHCCCS allowable accommodation and ancillary department hospital costs excluding capital and medical education costs.

“Outlier” means a hospital claim or encounter in which the operating costs per day for an AHCCCS inpatient hospital stay meet the criteria described under Article 7 of this Chapter and A.R.S. § 36-2903.01(H)

“Outpatient hospital service” means a service provided in an outpatient hospital setting that does not result in an admission.

“Ownership change” means a change in a hospital’s owner, lessor, or operator under 42 CFR 489.18(A).

“Peer group” means hospitals that share a common, stable, and independently definable characteristic or feature that significantly influences the cost of providing hospital services, including specialty hospitals that limit the provision of services to specific patient populations, such as rehabilitative patients or children.

“PPS bed” means Medicare-approved Prospective Payment beds for inpatient services as reported in the Medicare cost reports for the most recent fiscal year for which the Administration has a complete set of Medicare cost reports for every rural hospital as determined as of the first of February of each year.

“Procedure Code” means the numeric or alphanumeric code listed in the CPT or HCPCS manual by which a procedure or service is identified.

“Prospective rates” means inpatient or outpatient hospital rates defined by AHCCCS in advance of a payment period and representing full payment for covered services excluding any quick-pay discounts, slow-pay penalties, and first-and third-party payments regardless of billed charges or individual hospital costs.

“Public Hospital” means a hospital that is owned and operated by county, state or hospital health care district.

“Rebase” means the process by which the most currently available and complete year Medicare Cost Report data and AHCCCS claim and encounter data of the corresponding year, are collected and analyzed to reset the Inpatient Hospital Tiered Per Diem rates, or the Outpatient Hospital Capped Fee For Service Schedule.

“Reinsurance” means a risk-sharing program provided by AHCCCS to contractors for the reimbursement of certain contract service costs incurred by a member beyond a certain monetary threshold.

“Remittance advice” means an electronic or paper document submitted to an AHCCCS registered provider by AHCCCS to explain the disposition of a claim.

“Revenue Code” means a numeric code, which identifies a specific accommodation, ancillary service or billing calculation, as defined by the National Uniform Billing committee for UB-92 forms.

~~“National Standard code sets” means codes that are accepted nationally in accordance with federal requirements under 45 CFR 160 and 45 CFR 164.~~

“Specialty facility” means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.

“Tier” means a grouping of inpatient hospital services into levels of care based on diagnosis, procedure or revenue codes, peer group, or NICU classification level, or any combination of these items.

“Tiered per diem” means an AHCCCS capped fee schedule in which payment is made on a per-day basis depending upon the tier (or tiers) into which an AHCCCS inpatient hospital day of care is assigned.

R9-22-712.07. Rural Hospital Inpatient Fund Allocation

A. For purposes of this rule, the words and phrases used in this rule have the following meanings unless the context specifically requires another meaning:

“Calculated inpatient costs” means the sum of inpatient covered charges multiplied by the Milliman study’s implied cost-to-charge ratio of .8959.

“Claims paid amount” means the sum of all claims paid by AHCCCS Administration and its contractors, as reported by the contractor to the administration, to a rural hospital for AHCCCS covered inpatient services rendered during the previous state fiscal year.

“Fund” means any state funds appropriated by the Legislature for the purposes set forth in A.R.S. § 36-2905.02 and any federal funds that are available for matching those state funds.

“Inpatient covered charges” means the sum of all covered charges billed by the hospital to the administration or its contractors, as reported by the contractors to the administration, for inpatient services rendered during the previous state fiscal year.

“Milliman study” means the report issued by Milliman USA on March 11, 2004 to the Arizona Hospital and Healthcare Association that updated the cost study portion of the hospital reimbursement study conducted under Arizona Laws 2001, Chapter 344, Section 109. A copy of each report is on file with the Administration.

“Rural Hospital” means a medical institution that is licensed by the Arizona Department of Health Services for the prior state fiscal year as a hospital but does not include hospitals operated by IHS or special hospitals that limit the care provided to rehabilitation services, and that (1) has 100 or fewer beds and is located in a county with a population of less than 500,000 persons or (2) is designated as a critical access hospital for the majority of the prior state fiscal year.

“Total Inpatient payments” means the sum of: (1) the claims paid amount, (2) any disproportionate share hospital payments for the previous fiscal year, and (3) the inpatient component of any critical access hospital payments made to the hospital for the previous state fiscal year.

B. Each state fiscal year in February, the Administration shall allocate the Fund to the following three pools:

1. Rural hospitals with fewer than 26 PPS beds and all Critical Access Hospitals, regardless of the number of beds in the Critical Access Hospital.
2. Rural hospitals other than Critical Access Hospitals with 26 to 75 PPS beds.
3. Rural hospitals other than Critical Access Hospitals with 76 to 100 PPS beds.

C. The Administration shall allocate the Fund to each pool according to the ratio of (1) total inpatient payments to all hospitals assigned to the pool to (2) total inpatient payments to all rural hospitals.

D. The Administration shall determine each hospital’s claims paid amount and allocate the funds in each pool to each hospital in the pool based on the ratio of (1) each hospital’s claims paid amount to (2) the sum of the claims paid amount for all hospitals assigned to that pool.

E. At no time will any hospital’s total inpatient payments plus that hospital’s Fund payment be greater than that hospital’s calculated inpatient costs. In the event that a hospital’s total inpatient payments plus that hospital’s Fund payment is greater than the hospital’s calculated inpatient costs, then the hospital will receive a Fund payment equal to the difference between the hospital’s calculated inpatient costs and the hospital’s total inpatient payments. Any portion of a hospital’s fund allocation that is not paid to the hospital due to the above reason will be re-allocated to the other eligible hospitals in that pool, based upon the ratio of (1) the claims paid amount for each hospital remaining in the pool to (2) the sum of the claims paid amount for each hospital remaining in the pool.

F. In the event that funds remain in a pool after allocations to each hospital in the pool under subsections (D) and (E), those remaining funds will be re-allocated to the remaining pools, based upon the ratio of (1) each remaining pool’s original allocation of the Fund as determined under subsection (C) to (2) the sum of the remaining pools’ original Fund allocation under subsection (C), then the remaining funds will be reallocated to the hospitals in the remaining pools under subsection (D) and (E). See Exhibit 1 for an example.

Exhibit 1. Pool Example

Pool A receives \$2,000,000. Pool B receives \$7,000,000. Pool C receives \$3,000,000.

If all of the funds in Pool B are paid to eligible hospitals and there is \$1,000,000 remaining, then those remaining funds would be allocated to Pool A and Pool C based on the ratio of each pool’s original allocations (original allocations of \$2,000,000 and \$3,000,000) to the total of their original allocation

(\$2,000,000 + \$3,000,000 = \$5,000,000).

Pool A would receive 2/5 of the remaining funds (\$400,000) and Pool C would receive 3/5 of the remaining funds (\$600,000).

G. Subject to CMS approval, the administration or its contractors will distribute the Fund as a lump sum allocation to the rural hospitals in either one or two installments by the end of each state fiscal year.

NOTICE OF PROPOSED RULEMAKING

TITLE 11. MINES

CHAPTER 3. AGGREGATE MINE LAND RECLAMATION

[R06-65]

PREAMBLE

1. Sections Affected

Rulemaking Action

| | |
|-----------|-------------|
| Article 1 | New Article |
| R11-3-101 | New Section |
| Article 2 | New Article |
| R11-3-201 | New Section |
| R11-3-202 | New Section |
| R11-3-203 | New Section |
| R11-3-204 | New Section |
| R11-3-205 | New Section |
| R11-3-206 | New Section |
| R11-3-207 | New Section |
| R11-3-208 | New Section |
| R11-3-209 | New Section |
| Article 3 | New Article |
| R11-3-301 | New Section |
| R11-3-302 | New Section |
| Article 4 | New Article |
| R11-3-401 | New Section |
| R11-3-402 | New Section |
| Article 5 | New Article |
| R11-3-501 | New Section |
| R11-3-502 | New Section |
| R11-3-503 | New Section |
| R11-3-504 | New Section |
| Article 6 | New Article |
| R11-3-601 | New Section |
| R11-3-602 | New Section |
| R11-3-603 | New Section |
| Article 7 | New Article |
| R11-3-701 | New Section |
| R11-3-702 | New Section |
| R11-3-703 | New Section |
| R11-3-704 | New Section |
| R11-3-705 | New Section |
| R11-3-706 | New Section |
| Article 8 | New Article |
| R11-3-801 | New Section |
| R11-3-802 | New Section |
| R11-3-803 | New Section |
| R11-3-804 | New Section |
| R11-3-805 | New Section |
| R11-3-806 | New Section |
| R11-3-807 | New Section |
| R11-3-808 | New Section |
| R11-3-809 | New Section |
| R11-3-810 | New Section |
| R11-3-811 | New Section |
| R11-3-812 | New Section |
| R11-3-813 | New Section |
| R11-3-814 | New Section |
| R11-3-815 | New Section |
| R11-3-816 | New Section |
| R11-3-817 | New Section |

Notices of Proposed Rulemaking

| | |
|-----------|-------------|
| R11-3-818 | New Section |
| R11-3-819 | New Section |
| R11-3-820 | New Section |
| R11-3-821 | New Section |
| R11-3-822 | New Section |
| R11-3-823 | New Section |

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 27-462

Implementing statute: A.R.S. §§ 27-1204, 27-1227, 27-1229, 27-1230, 27-1233, 27-1297

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 3872, October 7, 2005

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Kerry Ugalde
Address: Arizona State Mine Inspector
1700 W. Washington, #400
Phoenix, AZ 85007
Telephone: (602) 542-5971
Fax: (602) 542-5335
E-mail: kerryu@mi.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Aggregate Mine Land Reclamation Act (Arizona Revised Statutes Title 27, Chapter 6) was passed in the First Regular Session of the 2005 Arizona Legislature. In general, the Act requires aggregate exploration operations and aggregate mining units to submit reclamation plans and financial assurance mechanisms to the Office of the State Mine Inspector. The Act requires the State Mine Inspector to adopt rules consistent with the Act for the reclamation of surface disturbances at aggregate exploration operations and aggregate mining units, including rules to:

1. Implement the public notice, comment and hearing provisions of the Act for reclamation plans;
2. Define the term "substantial change" to an approved reclamation plan;
3. Establish a reclamation plan submission fee schedule;
4. Provide for additional licensing time-frames, if necessary; and
5. Define standards and procedures relating to financial assurance requirements.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The Arizona State Mine Inspector's Office anticipates the Act and this rulemaking will affect aggregate mining operators. These stakeholders have participated in discussions regarding the level of impact and the measures needed to reduce those effects follow.

The initial costs will be in the Aggregate Mine Land Reclamation Plan development and application submittal fees. Aggregate mining operations which are smaller than five acres, are exempted from requirements of the Act and these rules.

ASMI staff will work with associations, and other organizations to provide informational sessions to discuss how to prepare, write and submit a reclamation plan. Larger operators and/or those with complex reclamation plans may require specialized assistance from internal mining engineers and external consulting firms. Operators who are over the five acres but still small enough to perform less complicated reclamation plans will benefit from these sessions by being able to prepare plans in-house.

Under the provisions of the Act, the Mine Inspector can consider unique complications that may significantly challenge an existing aggregate mine operator's reclamation plan. The rules allow appropriate variances to the plan, if there is no consequence to safety and stability.

Notices of Proposed Rulemaking

In the Act, mine operators are required to comply with financial assurances to ensure reclamation plans can be achieved, and different types of financial assurance are allowed. But the strict requirements of those financial assurances could have a more adverse effect on smaller operators by limiting them to using the most costly mechanisms. To reduce this possible negative impact, "bond pooling" was included as a cost reduction measures for small mine operators.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Kerry Ugalde
Address: Arizona State Mine Inspector
1700 W. Washington, #400
Phoenix, AZ 85007
Telephone: (602) 542-5971
Fax: (602) 542-5335
E-mail: kerryu@mi.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is schedule, where, when, and how persons may request an oral proceeding on the proposed rule:

The Office of the Arizona State Mine Inspector has scheduled an oral proceeding:

Date: April 18, 2006
Location: 1700 W. Washington, First Floor Conference Room
Time: 9:30 a.m. to 10:30 a.m.

Oral comments will be received during the oral proceeding. Until the close of record, a person may submit written comments on the proposed rules or the preliminary economic, small business, and consumer impact summary to the individual listed in items #4 and 9.

The close of record is 5:00 p.m., April 18, 2006.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 11. MINES

CHAPTER 3. AGGREGATE MINE LAND RECLAMATION

ARTICLE 1. DEFINITIONS

Section
R11-3-101. Definitions

ARTICLE 2. GENERAL REGULATORY PROVISIONS

Section
R11-3-201. Document Submittals
R11-3-202. Preservation of Documents
R11-3-203. Extension of Time for Submittal of Plan
R11-3-204. Supersedure by Federal Plan
R11-3-205. Extension of Time for Initiation of Reclamation
R11-3-206. Variance
R11-3-207. Changes to Approved Reclamation Plans
R11-3-208. Cessation of Aggregate Mining Activity
R11-3-209. Fees
R11-3-210. Public Notices and Meetings

Notices of Proposed Rulemaking

**ARTICLE 3. EXPLORATION OPERATION
RECLAMATION PLAN**

| | |
|-------------------|---|
| Section | |
| <u>R11-3-301.</u> | <u>Exploration Operation Reclamation Plan Content</u> |
| <u>R11-3-302.</u> | <u>Annual Renewal of Exploration Operation Reclamation Plan</u> |

**ARTICLE 4. EXPLORATION OPERATION
RECLAMATION STANDARDS**

| | |
|-------------------|--------------------------|
| Section | |
| <u>R11-3-401.</u> | <u>Restricted Access</u> |
| <u>R11-3-402.</u> | <u>Trash Removal</u> |

ARTICLE 5. AGGREGATE MINING UNIT RECLAMATION PLAN

| | |
|-------------------|---|
| Section | |
| <u>R11-3-501.</u> | <u>Aggregate Mining Unit Reclamation Plan Content</u> |
| <u>R11-3-502.</u> | <u>Life of Approved Reclamation Plan</u> |
| <u>R11-3-503.</u> | <u>Multiple Postaggregate Mining Land Uses</u> |
| <u>R11-3-504.</u> | <u>Annual Status Report</u> |

ARTICLE 6. AGGREGATE MINING UNIT RECLAMATION STANDARDS

| | |
|-------------------|---|
| Section | |
| <u>R11-3-601.</u> | <u>Public Safety Standards</u> |
| <u>R11-3-602.</u> | <u>Erosion Control and Topographic Contouring</u> |
| <u>R11-3-603.</u> | <u>Roads</u> |

ARTICLE 7. REVEGETATION AND SOIL STANDARDS

| | |
|-------------------|--------------------------------|
| Section | |
| <u>R11-3-701.</u> | <u>Revegetation Provisions</u> |
| <u>R11-3-702.</u> | <u>Revegetation Standards</u> |
| <u>R11-3-703.</u> | <u>Soil Conservation</u> |
| <u>R11-3-704.</u> | <u>Redistribution of Soil</u> |
| <u>R11-3-705.</u> | <u>Off-site Soil</u> |

ARTICLE 8. FINANCIAL ASSURANCE

| | |
|-------------------|---|
| Section | |
| <u>R11-3-801.</u> | <u>Definitions</u> |
| <u>R11-3-802.</u> | <u>Amount of Financial Assurance</u> |
| <u>R11-3-803.</u> | <u>Blanket Financial Assurance</u> |
| <u>R11-3-804.</u> | <u>Surety Bonds</u> |
| <u>R11-3-805.</u> | <u>Certificates of Deposit</u> |
| <u>R11-3-806.</u> | <u>Trust Funds</u> |
| <u>R11-3-807.</u> | <u>Letters of Credit</u> |
| <u>R11-3-808.</u> | <u>Insurance</u> |
| <u>R11-3-809.</u> | <u>Certificates of Self-insurance</u> |
| <u>R11-3-810.</u> | <u>Cash Deposits</u> |
| <u>R11-3-811.</u> | <u>Corporate Financial Tests</u> |
| <u>R11-3-812.</u> | <u>Annuities</u> |
| <u>R11-3-813.</u> | <u>Bonding Pools</u> |
| <u>R11-3-814.</u> | <u>Final Action on Financial Assurance Mechanisms</u> |
| <u>R11-3-815.</u> | <u>Incremental Financial Assurance</u> |
| <u>R11-3-816.</u> | <u>Financial Assurance Funding</u> |
| <u>R11-3-817.</u> | <u>Limited Individual Financial Assurance for Single Unit</u> |
| <u>R11-3-818.</u> | <u>Application for Release of Financial Assurance</u> |

| | |
|-------------------|--|
| <u>R11-3-819.</u> | <u>Forfeiture Criteria/Forfeiture of Financial Assurance</u> |
| <u>R11-3-820.</u> | <u>Notification of Forfeiture Action</u> |
| <u>R11-3-821.</u> | <u>Avoidance of Forfeiture</u> |
| <u>R11-3-822.</u> | <u>Notice of Exercise of Forfeiture</u> |
| <u>R11-3-823.</u> | <u>Full Release of Financial Assurance</u> |

ARTICLE 1. DEFINITIONS

R11-3-101. Definitions

In this Chapter and the Act, unless the context otherwise requires:

“Act” means the Arizona Aggregate Mined Land Reclamation Act, enacted in 2005, A.R.S. § 27-1201 et seq., as amended.

“Aggregate mining activity” means any activity directly involved in aggregate mineral exploration, development, or production and processing at or on an exploration operation or an aggregate mining unit.

“Approved reclamation plan” means the owner’s or operator’s plan for reclaiming surface disturbances approved by the State Mine Inspector.

“Backfill” means earth, overburden, mine development rock, or imported material used to replace material removed during aggregate mining.

“Commodities in commerce” means aggregate commodities that are mined for use or conversion into a salable or usable product.

“Completion” or “Completing” means the permanent discontinuance of aggregate mining activity of an exploration operation or aggregate mining unit without the intent to resume operation.

“Growth media” means substances or materials that promote or support vegetation.

“Inspection” means a visual review of an exploration operation or aggregate mining unit to ensure compliance with the Act, this Chapter, or any condition of an approved reclamation plan.

“Institutional controls” means mechanisms that guide, manage, or exercise restraint or direction, including deed restrictions to protect public safety, fencing, and physical control of access.

“Operator” means any person who is legally responsible for directing aggregate mining activity at an exploration operation or an aggregate mining unit.

“Owner” means any person who owns land with surface disturbances subject to the Act and this Chapter.

“Person” means an individual, corporation, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

“Showing of good cause” means a demonstration by the owner or operator of a reason beyond the owner’s or operator’s control which prevents or limits the ability to act within required time limits or a demonstration by the owner or operator that the owner or operator is making good faith efforts toward the coordination and submittal of a reclamation plan.

“Subsidence” means the measurable lowering of a portion of the earth’s surface or substrata.

ARTICLE 2. GENERAL REGULATORY PROVISIONS

R11-3-201. Document Submittals

A. An owner or operator shall submit to the State Mine Inspector by certified mail (return receipt requested), express mail (with a receipt), or by hand delivery the following:

1. Reclamation plans and amendments (one original and four copies);
2. Certificates of disclosure;
3. Financial assurance mechanisms;
4. Notices of transfer;
5. Applications, petitions or requests for or objections to substantial changes, notices of proposed changes, amendments, releases of financial assurance mechanisms; or
6. Any other matter that may require action by the State Mine Inspector.

B. All submittals shall be dated and signed by the owner or operator or by a person who has legal authority to sign on behalf of the owner or operator. All submittals shall include the names and addresses of the owner and operator and any individuals who will be regulatory contacts.

R11-3-202. Preservation of Documents

An owner or operator shall retain a copy of the current approved reclamation plan, reclamation plans for areas for which recla-

Notices of Proposed Rulemaking

mation has been completed, and the most recent annual status report until all reclamation measures have been completed. These documents shall be available for examination by the inspector.

R11-3-203. Extension of Time for Submittal of Plan

The owner or operator may request one or more extensions of time for submittal of a reclamation plan for an existing exploration operation or an existing aggregate mining unit. If the State Mine Inspector grants an extension of time to submit a reclamation plan for an existing exploration operation or an existing aggregate mining unit, the extension shall not exceed 90 days. For each subsequent extension, the owner or operator shall submit a revised request which indicates any changes in the relevant factors for consideration shown in the previous request for extension.

R11-3-204. Supersedure by Federal Plan

- A. The owner or operator of an exploration operation or an aggregate mining unit which is located in part or in whole on land administered by a federal agency may submit to the State Mine Inspector a request for supersedure pursuant to A.R.S. § 27-1232. Such a request shall include a copy of the federal reclamation plan and the financial assurance mechanism.
- B. Within 30 days after receiving a request for supersedure, the State Mine Inspector shall determine in writing whether the federal reclamation plan and financial assurance mechanism are consistent with and shall supersede the requirements of the Act and this Chapter. If the State Mine Inspector denies the request to supersede, the State Mine Inspector shall provide an explanation of the reasons for denial in the written determination.

R11-3-205. Extension of Time for Initiation of Reclamation

- A. The owner or operator of an exploration operation or an aggregate mining unit shall submit a written request for an extension of time to begin reclamation under A.R.S. § 27-1226(B) at least 45 days before the time to begin reclamation under A.R.S. § 27-1226.
- B. The State Mine Inspector shall evaluate and either approve or deny the request within 30 days. If the State Mine Inspector denies the request for an extension, the State Mine Inspector shall state the reasons for denial in writing.

R11-3-206. Variance

- A. The State Mine Inspector may allow an owner or operator of an exploration operation or aggregate mining unit to vary from a requirement of this Chapter or any requirement or condition of an approved reclamation plan if the inspector finds that allowing the variance will not endanger public safety and will not be inconsistent with the criteria established in A.R.S. § 27-1273. In addition to information required by the Act or elsewhere in this Chapter, a request for variance submitted pursuant to this Section shall include:
1. Identification by the owner or operator and name, if any, of the exploration operation or aggregate mining unit for which the variance is sought;
 2. A descriptive location of the property on which the exploration operation or aggregate mining unit is located;
 3. Identification of the Section of this Chapter or requirement or condition of the approved reclamation plan from which the variance is sought;
 4. The justification for the variance; and
 5. Alternative methods or measures to be used.
- B. Within 30 days after receiving a variance request pursuant to this Section, the State Mine Inspector shall grant a conditional order authorizing the variance or deny the request in writing. The State Mine Inspector shall state the reasons for the determination.

R11-3-207. Changes to Approved Reclamation Plans

- A. For purposes of the Act and this Chapter, "substantial change" means:
1. Changes in the postaggregate mining use of the land stated in the approved reclamation plan.
 2. New surface disturbances that cannot be reclaimed in a manner that is substantially similar to the manner of reclamation stated in the approved reclamation plan.
 3. Changes to the final topography stated in the approved reclamation plan, including the slopes or configuration of overburden or waste rock stockpiles and fine areas.
 4. Changes to the reclamation measures stated in the approved reclamation plan that lessen restrictions on public access to pits and other surface features that may be a hazard to public safety.
 5. Changes in the reclamation measures stated in the approved reclamation plan for an aggregate mining unit or facility that materially affect the achievement of the postaggregate mining land use
 6. Changes in the reclamation measures stated in the approved reclamation plan for exploration operations that materially affect the reclamation of access roads, drill pads, drill holes, trenches and other exploration workings for exploration operations.
 7. Significant decreases in the cost estimate stated in the reclamation plan to perform reclamation measures for purposes of determining financial assurance requirements under Article 5 of the Act.
- B. If the State Mine Inspector determines a proposed change is not substantial, the owner or operator is required to file only the amendment to the reclamation plan with the State Mine Inspector and modify the financial assurance as necessary to

account for the change.

R11-3-208. Cessation of Aggregate Mining Activity

- A.** The cessation of aggregate mining will be considered to have occurred if any of the following occur:
1. The person conducting the aggregate mining activity has gone out of business and there is no succeeding legal entity;
 2. No aggregate mining activity has taken place within one year from the date the most recent annual status report was filed with the State Mine Inspector;
 3. The extension of the time to begin reclamation requested by the owner or operator and approved by the State Mine Inspector under R11-3-205 has expired and no other extension has been granted, or
 4. The State Mine Inspector has made a written determination the aggregate mining facility has been temporarily or permanently abandoned.
- B.** The State Mine Inspector shall provide written notice by certified mail (return receipt requested), express mail (with a receipt), or by hand delivery to the owner or operator of an exploration operation or aggregate mining unit or facility of a proposed determination of cessation of aggregate mining activity. The State Mine Inspector shall allow the owner or operator to respond to the proposed determination of cessation of aggregate mining activity for at least 30 days. The State Mine Inspector shall provide written notice by certified mail (return receipt requested), express mail (with a receipt), or by hand delivery to the owner or operator of an exploration operation or aggregate mining unit or facility of any final determination of cessation of aggregate mining activity.

R11-3-209. Fees

- A.** The State Mine Inspector shall assess and collect a one-time submission fee specified in subsection (B) from the owner or operator of each exploration operation and aggregate mining unit or facility at the time the owner or operator submits a proposed reclamation plan or change to an approved reclamation plan under the Act and this Chapter. In addition, the owner or operator of an exploration operation or aggregate mining unit or facility shall reimburse the State Mine Inspector for actual and reasonable expenses of publishing or mailing the public notices required by A.R.S. §§ 27-1229 and 27-1229.01.
- B.** The submission fees for processing, issuing or denying a plan or changes are as follows:
1. Reclamation plan for an exploration operation or substantial change to an approved reclamation plan for an exploration operation: \$1,565.00
 2. Reclamation plan for aggregate mining units or facility or a substantial change to an approved reclamation plan for an aggregate mining unit or facility \$3,800.00
 3. Changes that are not substantial to an approved reclamation plan \$ 500.00
- C.** In addition to the submission fees specified in subsection (B), the owner or operator of an exploration operation or aggregate mining unit or facility shall reimburse the State Mine Inspector for any actual, reasonable postal, newspaper advertisement or meeting room rental expenses incurred to outside parties for publishing or mailing the public notices as required by the Act or holding public meetings as required by the Act.

R11-3-210. Public Notices and Meetings

- A.** Public notices required by A.R.S. §§ 27-1229 or 27-1229.01 shall include the mailing address of State Mine Inspector's Office where written comments may be addressed, and the date and time by which comments shall be received. All written comments shall state the name and mailing address of the commenter, be signed by the commenter or the commenter's agent or attorney and clearly state why the proposed reclamation plan or substantial change to an approved reclamation plan should be approved or denied by the State Mine Inspector. Written comments shall be limited to whether the proposed reclamation plan or substantial change to an approved reclamation plan meets the criteria for approval or denial as provided in the Act.
- B.** The State Mine Inspector shall include the time and location of public meetings required by A.R.S. §§ 27-1229 or 27-1229.01.
- C.** Public meetings scheduled pursuant to A.R.S. §§ 27-1229 or 27-1229.01 shall be conducted so as to do both of the following:
1. Inform the public of the proposed reclamation plan or substantial change to an approved reclamation plan, and
 2. Allow time for persons to make statements and submit written comments on the proposed reclamation plan or substantial change to an approved reclamation plan.
- D.** The person presiding at a public meeting shall maintain order and may allot equitable time periods for oral comments by participants. The State Mine Inspector may schedule persons wishing to speak and personnel from the State Mine Inspector's Office who are knowledgeable about the proposed reclamation plan or substantial change to an approved reclamation plan.
- E.** The State Mine Inspector shall record public meetings scheduled pursuant to A.R.S. §§ 27-1229 or 27-1229.01 by means of an electronic device or stenographically.
- F.** The State Mine Inspector shall maintain a record of a public meeting scheduled pursuant to A.R.S. §§ 27-1229 or 27-1229.01. The Inspector shall make the record available for public inspection during normal business hours at the Inspec-

Notices of Proposed Rulemaking

tor's offices. The record of a public meeting scheduled pursuant to A.R.S. §§ 27-1229 or 27-1229.01 shall include the agenda, any written comments submitted by the comment deadline, and the electronic recording or transcript of the hearing.

**ARTICLE 3. EXPLORATION OPERATION
RECLAMATION PLAN**

R11-3-301. Exploration Operation Reclamation Plan Content

- A.** In addition to the content requirements found in A.R.S. § 27-1251(A), the reclamation plan shall also include a sketch of the layout of the exploration project, showing the locations, nature, and acreage of each surface disturbance. The owner or operator shall not be required to include specific survey coordinates, identifying exact topographic features, or exact geographic locations.
- B.** For existing exploration operations, the owner or operator shall include the estimated costs to perform the reclamation measures to determine financial assurance requirements under Article 5 of the Act and Article 8 of this Chapter.

R11-3-302. Annual Renewal of Exploration Operation Reclamation Plan

- A.** Every owner or operator with an approved reclamation plan shall annually, within 60 days after the anniversary date of the approved reclamation plan, submit to the State Mine Inspector a request for annual renewal pursuant to A.R.S. § 27-1255. The request shall:
- 1.** Provide the status of the exploration operation reclamation;
 - 2.** Include the total number of acres of surface disturbances, the number of acres reclaimed during the reporting year, and the number of acres of surface disturbances which have not yet been reclaimed; and
 - 3.** Include any modifications to the approved reclamation plan.
- B.** The State Mine Inspector shall renew the approved reclamation plan, including modifications, if the renewal includes modifications that are consistent with the criteria of the Act and this Chapter and if additional financial assurance required by the Act has been submitted to the State Mine Inspector. If the renewal includes modifications to the approved plan that constitute a substantial change, the State Mine Inspector shall renew the approved reclamation plan under the procedures of A.R.S. §§ 27-1227 and 27-1229 or deny the proposed substantial change.
- C.** The State Mine Inspector shall approve or deny the request for annual renewal for an exploration operation reclamation plan within 60 days after receipt of the request for annual renewal is made by the owner or operator.

**ARTICLE 4. EXPLORATION OPERATION
RECLAMATION STANDARDS**

R11-3-401. Restricted Access

Under A.R.S. § 27-1253(5), access to those portions or places of open pits or trenches in places frequented by the public shall be restricted by measures including fencing and the posting of visible warning signs.

R11-3-402. Trash Removal

The owner or operator shall remove trash and other materials and structures incidental to exploration that pose a threat to public safety, create a public nuisance, or are inconsistent with an approved reclamation plan.

ARTICLE 5. AGGREGATE MINING UNIT RECLAMATION PLAN

R11-3-501. Aggregate Mining Unit Reclamation Plan Content

- A.** In addition to the proposed reclamation measures that are necessary to achieve the postaggregate mining land use found under A.R.S. §§ 27-1271(B)(9)(a) through (d), the reclamation plan shall include procedures to aid in the development of vegetation consistent with the proposed postaggregate mining land use objective for surface disturbances where the postaggregate mining land use objective is grazing, wildlife habitat, or forestry. The type, density, and diversity of vegetation proposed shall depend on what is technically and economically practicable given site-specific characteristics such as climate and the availability and quality of soil.
- B.** Maps of the existing or proposed surface disturbances submitted pursuant to A.R.S. § 27-1271(B)(8) for aggregate mining units shall indicate the following:
- 1.** Existing and proposed postaggregate mining and post-reclamation physical topography;
 - 2.** Natural features, including surface water;
 - 3.** Surface disturbances, pits, excavations, and building sites;
 - 4.** Aggregate mine development rock piles, soil or growth media storage piles, overburden stockpiles, and other piles of unconsolidated material;
 - 5.** Settling ponds and fine materials;

Notices of Proposed Rulemaking

6. Roads, buildings, structures, and stationary equipment;
7. Final postaggregate mining land use objectives for each portion of the surface disturbance; and
8. Boundaries of the aggregate mining unit.

R11-3-502. Life of Approved Reclamation Plan

An approved reclamation plan, along with any approved substantial changes, shall remain in effect until reclamation is complete and all financial assurance is released.

R11-3-503. Multiple Postaggregate Mining Land Uses

An owner or operator may list multiple postaggregate mining land uses for an aggregate mining unit if the reclamation plan shows the postaggregate mining land use for each area and each use satisfies the requirements of the Act and this Chapter.

R11-3-504. Annual Status Report

An owner or operator with an approved reclamation plan shall submit an annual status report for the preceding year to the State Mine Inspector within 60 days after the anniversary date of reclamation plan approval. The status report shall:

1. Provide the status of the aggregate mining unit;
2. Include a map, an aerial photograph, or both, identifying the location of the surface disturbance and reclaimed area and the year in which the surface disturbance and reclamation was completed. If there have been no changes in the previous year, then neither new maps nor new aerial photographs are necessary, and the owner or operator shall state there have been no changes in the annual status report; and
3. Include the total number of acres of surface disturbances, the number of acres reclaimed during the reporting year, and the number of acres of surface disturbances which have not yet been reclaimed.

ARTICLE 6. AGGREGATE MINING UNIT RECLAMATION STANDARDS

R11-3-601. Public Safety Standards

- A.** Reclamation activities at aggregate mining units shall be designed to reduce hazards to public safety to the extent technically and economically practicable by measures, including:
1. Removal of scrap metal, wood, trash, and other debris that pose a threat to public safety, or create a public nuisance, or are inconsistent with an approved reclamation plan; and
 2. Regrading slopes as prescribed under R11-3-602.
- B.** The owner or operator shall maintain structures, equipment, and excavations at the reclamation site in a safe manner and shall restrict access to provide for public safety. Where hazards to public safety cannot be adequately reduced through reclamation measures; where buildings, structures, and excavations remain as part of the approved postaggregate mining land use; or where an aggregate mining unit has been exempted from reclamation under A.R.S. § 27-1275(A), any hazard to public safety shall be reduced by:
1. Constructing berms, fences, barriers, or any combination of these measures to restrict public access when technically and economically practicable; and
 2. Posting visible warning signs in locations where public access is available.

R11-3-602. Erosion Control and Topographic Contouring

- A.** Aggregate mining units shall be reclaimed to a stable condition for erosion control and seismic activity.
- B.** Grading and other topographic contouring methods shall be conducted, as necessary, to establish final land forms which are:
1. Suitable for the postaggregate mining land use objective in the approved reclamation plan.
 2. Stable under static and dynamic conditions as certified by a qualified engineer considering the following:
 - a. Site-specific seismic conditions;
 - b. Safety consistent with good engineering practices; and
 - c. The hazard to public safety, if failure occurs.
- C.** Site-specific grading, revegetation, or other proposed erosion control measures shall be conducted, as necessary, to address erosion so that permanent piles of aggregate mine development rock, overburden, and fine materials shall not restrict surface drainages in a manner that contributes to excessive erosion or which compromises the stability of the reclaimed facility.

R11-3-603. Roads

- A.** Reclamation of a road that is not included in the approved reclamation plan as part of the approved postaggregate mining land use shall begin once the road is no longer needed for operations, reclamation, or monitoring.
- B.** The following reclamation measures shall be conducted, as necessary, to achieve the postaggregate mining land use included in the approved reclamation plan:
1. Vehicular traffic shall be controlled on the reclamation area to achieve the reclamation objectives;
 2. Surface drainage patterns shall be restored to preaggregate mining conditions or new patterns shall be established;

Notices of Proposed Rulemaking

3. All bridges and culverts shall be removed or stabilized in place;
4. Bridges and culverts left in place shall be protected from erosion with rock, concrete, or riprap; and
5. Roadbeds shall be ripped, plowed, and scarified and revegetated, as necessary, to achieve the postaggregate mining land use.

ARTICLE 7. REVEGETATION AND SOIL STANDARDS

R11-3-701. Revegetation Provisions

- A.** If revegetation is part of the proposed reclamation plan, the plan shall describe the:
1. Season of revegetation.
 2. Species and amounts per acre of seeds or flora, and
 3. Planting methods.
- B.** If the proposed reclamation plan includes mulching, irrigation, pest control, disease control, or growth management measures, the proposed reclamation plan shall specifically describe the techniques, methods, controls, or measures to be used.

R11-3-702. Revegetation Standards

- A.** Where surface disturbances result in compaction of the soil, ripping, disking, or other means shall be used in areas to be revegetated to reduce compaction and to establish a suitable root zone in preparation for planting.
- B.** Revegetation shall be conducted to establish plant species that will support the approved postaggregate mining land use. The establishment of vegetation species, density, or diversity which is different than pre-existing conditions or on adjacent lands shall constitute successful reclamation if any of the following apply:
1. The postaggregate mining land use is different than the preaggregate mining land use or the use of adjacent lands;
 2. The site-specific nature of the surface disturbance, including soil conditions and topography, is such that the establishment of pre-existing or adjacent conditions is not technically or economically practicable; or
 3. The establishment of different species is preferable for control of erosion.
- C.** Planting shall be conducted during the most favorable period of the year for plant establishment.
- D.** Soil stabilizing practices or irrigation measures, or both, may be used to establish vegetation.
- E.** This Section only applies if vegetation or revegetation measures are included in the approved reclamation plan.

R11-3-703. Soil Conservation

If soil conservation is required by A.R.S. § 27-1274, any stockpiles of conserved soil shall be marked with legible signs that identify the stockpile as "SOIL." A soil stockpile shall be stabilized, if necessary, to prevent excessive losses from erosion.

R11-3-704. Redistribution of Soil

Before redistribution of soil, the regaded land shall be treated, if necessary, to reduce the potential for slippage of the redistributed material or to enhance root penetration, or both. Soil and other materials shall be redistributed in a manner that prevents excess compaction and achieves a thickness consistent with the approved postaggregate mining land use.

R11-3-705. Off-site Soil

Soil may be brought in from an off-site location, and may include any growth media that will support vegetation, will provide a stable growing surface, and will not create a hazard to public safety.

ARTICLE 8. FINANCIAL ASSURANCE

R11-3-801. Definitions

- A.** Unless expressly defined in the Act or this Chapter, the terms used in this Article have the same meanings as understood pursuant to generally accepted accounting principles and practices.
- B.** In addition to the definitions provided in A.R.S. § 27-1201, the following definitions apply to this Article:
- "ICPA" means Independent Certified Public Accountant.
- "Parent corporation" means a corporation which directly owns at least 50% of the voting stock of the corporation which is the owner or operator. Any latter corporation is considered a "subsidiary" of the parent corporation.
- "Substantial business relationship" means the extent of a business relationship which is necessary, under applicable state law, to make a guarantee contract (issued on the basis of that relationship) valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, so that a currently existing business relationship between guarantor and the owner or operator is shown to the satisfaction of the State Mine Inspector.

R11-3-802. Amount of Financial Assurance

- A.** In estimating the cost of executing the reclamation plan, all activities in the reclamation plan shall be addressed, including, if applicable:
1. Earth moving, regrading, and stabilization of surface disturbances included in the reclamation plan;

Notices of Proposed Rulemaking

2. Revegetation, preparation of seedbed, and planting;
 3. Demolition of buildings and other structures;
 4. For new exploration operations, removal of trash and other materials and structures incidental to exploration;
 5. Any ongoing or long-term activities which are required to maintain the effectiveness of reclamation or are necessary in place of reclamation, including periodic clean-out of sediment basins or maintenance of berms and fences which are used to prevent access to areas which pose a threat to public safety;
 6. Equipment mobilization and demobilization;
 7. Contractor profit; and
 8. Administrative overhead.
- B.** In addition to submitting the estimated costs to perform each of the proposed reclamation measures required under A.R.S. § 27-1271(B)(11) or R11-3-301(B), the owner or operator of an aggregate mining unit or existing exploration operation shall submit to the State Mine Inspector:
1. Documentation for the calculation of the estimated costs, and
 2. The source of the estimated costs.
- C.** The State Mine Inspector shall review the owner's or operator's estimate of the cost for reclamation and determine if the estimate is adequate to complete all required reclamation.
- D.** If the State Mine Inspector determines the estimated cost of executing the reclamation plan is not adequate to complete all required reclamation, the reclamation plan shall be considered incomplete under A.R.S. §§ 27-1252 or 27-1272.
- E.** If an owner or operator submits a written request for a reduction of financial assurance, along with a demonstration of sufficient financial ability pursuant to A.R.S. § 27-1292(B), the State Mine Inspector shall grant or deny the request in writing within 30 days after receiving the request.

R11-3-803. Blanket Financial Assurance

- A.** A single financial assurance mechanism covering two or more aggregate mining units or facilities may be provided by an owner or operator instead of separate financial assurances for each unit or facility. If an owner or operator provides a single financial assurance mechanism, it shall demonstrate the financial ability to fulfill the total reclamation costs of the aggregate mining units or facilities covered by the single financial assurance mechanism.
- B.** If an additional unit or facility is to be covered under a single financial assurance mechanism previously provided to the State Mine Inspector, the owner or operator shall provide an updated financial assurance mechanism which demonstrates the financial ability to fulfill the aggregate reclamation costs of the aggregate mining units or facilities covered by the single financial assurance mechanism.
- C.** A single financial assurance mechanism covering two or more exploration operations may be provided by the owner or operator pursuant to A.R.S. § 27-1293.

R11-3-804. Surety Bonds

An owner or operator may provide the State Mine Inspector with a surety bond as financial assurance for reclamation. The surety bond shall be an indemnity agreement in a sum certain payable to the state of Arizona, executed by the owner or operator as principal and shall be supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Arizona.

R11-3-805. Certificates of Deposit

- A.** An owner or operator may provide the State Mine Inspector with a certificate of deposit which shows funds are available for reclamation of surface disturbances. The certificate of deposit shall name the state of Arizona as beneficiary. The financial institution issuing the certificate of deposit shall be a Federal Deposit Insurance Corporation-insured entity whose operations are regulated by a federal or state agency.
- B.** The owner or operator may redeem the certificate of deposit if alternative financial assurance that meets the requirements of the Act and this Chapter is substituted.

R11-3-806. Trust Funds

- A.** An owner or operator may satisfy the requirements of this Article by establishing a trust fund that meets the requirements of the Act and this Chapter. The trust fund shall name the state of Arizona as the primary beneficiary. The trustee shall be an entity which has the authority to act as trustee and whose trust operations are regulated and examined by a federal or state agency.
- B.** An owner or operator may satisfy the requirements of the trust fund by establishing a trust fund with a pay-in period that meets the requirements of the Act and this Chapter and by submitting an original signed duplicate of the trust agreement to the State Mine Inspector.
- C.** A copy of the trust agreement shall be placed in the facility's operating record.
- D.** The trust fund shall be initially funded in an amount at least equal to the costs estimated in the approved reclamation plan for reclamation of existing surface disturbances covered by the Act and any surface disturbances to occur in the first year of the trust fund.

Notices of Proposed Rulemaking

- E. Payments into the trust fund, other than the initial funding, shall be made annually, at a minimum, with subsequent payments made not later than 30 days after each annual anniversary of the date of the first payment by the owner or operator. Annual payments shall be in an amount adequate to pay all costs of reclamation for land to be disturbed in that annual period.
- F. If the property owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this Article, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Section.

R11-3-807. Letters of Credit

- A. An owner or operator may satisfy the requirements of this Article by obtaining an irrevocable stand-by letter of credit. The letter of credit shall be effective to receive financial assurance approval. The issuing institution shall be an entity which has the authority to issue letters of credit, is federally insured, and whose letter-of-credit operations are regulated and examined by a federal or state agency.
- B. The letter of credit shall be irrevocable and issued for a period set to exceed one year by at least 90 days and in an amount at least equal to the costs estimated in the approved reclamation plan for reclamation. The letter of credit shall provide that the expiration date will automatically renew as approved by the State Mine Inspector for a period of at least one year, unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the State Mine Inspector 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the notice of cancellation.
- C. The letter of credit shall indicate the conditions on which the state of Arizona may draw on the letter of credit.
- D. The property owner or operator may, with notification to the State Mine Inspector, cancel the letter of credit if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted or if the owner or operator is released from the requirements of this Article under A.R.S. § 27-1296, R11-3-818, or R11-3-823.

R11-3-808. Insurance

- A. An owner or operator may show financial assurance for reclamation by obtaining insurance that meets the requirements of this Section. At a minimum, the insurer shall be a non-captive insurance company licensed to transact the business of insurance by the Department of Insurance, or eligible to provide insurance as an excess or surplus lines insurer in the state of Arizona.
- B. The reclamation insurance policy shall guarantee funds will be available to reclaim all disturbed lands and be available when the operation fails to comply with the approved reclamation plan. The policy shall also guarantee that, once reclamation begins, the insurer will be responsible for payment up to an amount equal to the face amount of the policy, under the direction of the State Mine Inspector to the party specified by the State Mine Inspector.
- C. A policyholder may, with notification to the State Mine Inspector, receive partial payment for reclaimed areas. The insurance policy shall provide that requests for payment will be granted by the insurer only if the remaining value of the policy is adequate to cover the remaining costs of reclamation. The policyholder shall notify the State Mine Inspector that payment has been received.
- D. The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for the failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. The insurance policy shall provide that if there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the policyholder and to the State Mine Inspector 120 days in advance of the action. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect if, before the date of expiration, the premium due is paid.
- E. The insured may cancel the insurance policy, with notification to the State Mine Inspector, if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted.

R11-3-809. Certificates of Self-insurance

- A. An owner or operator may use self insurance in combination with a guarantee only if, to meet the requirement of the financial test under this Article, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.
- B. An owner, operator or guarantor, may satisfy the requirements of this Article upon successful completion of the financial test specified in this Section. Successful completion is determined by meeting the criteria of subsection (C) or (D) based on year-end financial statements for the latest completed fiscal year.
- C. The criteria of this subsection for successful completion of the financial test are:
 - 1. The owner, operator or guarantor shall have a tangible net worth of at least 10 times the costs estimated in the approved reclamation plan for reclamation.
 - 2. The owner, operator or guarantor shall have a tangible net worth of at least \$3 million.
 - 3. The owner, operator or guarantor shall submit to the State Mine Inspector a letter signed by the chief financial officer

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

showing compliance with this Section.

4. The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- D.** The criteria of this subsection for successful completion of the financial test are:
 1. The owner, operator, or guarantor shall meet the financial test requirements of R11-3-811.
 2. The fiscal year-end financial statements of the owner, operator, or guarantor shall be examined by an Independent Certified Public Accountant (ICPA) and included with the ICPA's report of the examination.
 3. The firm's year-end financial statements cannot include an adverse opinion, a disclaimer of opinion, or a "going concern" qualification.
 4. The owner, operator or guarantor shall submit to the State Mine Inspector a letter signed by the chief financial officer demonstrating compliance with this Section.
 5. If the financial statements of the owner, operator, or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the owner, operator, or guarantor shall obtain a special report by an ICPA saying:
 - a. The ICPA has compared the data (which the letter from the chief financial officer specifies) as having been derived from the latest year-end financial statements of the owner, operator, or guarantor with the amounts in the financial statements; and
 - b. No matters caused the ICPA to believe the specified data should be adjusted.
- E.** If an owner or operator using the test to provide financial assurance finds the requirements of the financial test are no longer met, based on the year-end financial statements, the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the end of the year for which financial statements have been prepared.
- F.** The State Mine Inspector may require reports of financial condition, at any time, from the owner, operator, or guarantor. If the State Mine Inspector makes a written finding, on the basis of the reports or other information, that the owner, operator, or guarantor no longer meets the financial test requirements of subsection (C) or (D), the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this written finding.
- G.** After the initial submission of the items specified in subsection (C) or (D), the owner or operator shall send updated information to the State Mine Inspector within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subsection (C) or (D).

R11-3-810. Cash Deposits

- A.** An owner or operator may use a receipt of deposit with the State Treasurer for the estimated costs of reclamation. The receipt of deposit shall show funds are available for reclamation costs. The owner or operator shall complete a treasurer's financial warranty deposit under the State Mine Inspector's instructions. The deposit shall be in the name of the state of Arizona.
- B.** The owner or operator may cancel the deposit with the State Treasurer, with notification to the State Mine Inspector, if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted.

R11-3-811. Corporate Financial Tests

- A.** An owner or operator may satisfy the requirements of this Section upon successful completion of a financial test specified in subsection (B) or (C). Successful completion is determined by meeting the criteria of subsection (D).
- B.** The owner or operator shall have:
 1. Two of the following three ratios: a ratio of total liabilities to net worth of less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;
 2. Net working capital and tangible net worth each at least six times the costs estimated in the approved reclamation plan for reclamation;
 3. Tangible net worth of at least \$10 million; and
 4. Assets located in the United States amounting to at least 90% of total assets or at least six times the costs estimated in the approved reclamation plan for reclamation.
- C.** The owner or operator shall have all of the following:
 1. A current rating for the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
 2. Tangible net worth at least six times the sum of the costs estimated in the approved reclamation plan for reclamation;
 3. Tangible net worth of at least \$10 million; and
 4. Assets located in the United States amounting to at least 90% of total assets or at least 10 times the costs estimated in the approved reclamation plan for reclamation.
- D.** To show successful completion of the corporate financial test, the owner or operator shall submit the following to the State Mine Inspector:

Notices of Proposed Rulemaking

1. A letter signed by the owner's or operator's chief financial officer demonstrating compliance with this Section;
 2. A copy of the ICPA's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
 3. A special report from the owner's or operator's ICPA to the owner or operator saying:
 - a. The ICPA has compared the data (which the letter from the chief financial officer specified) as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in the financial statements; and
 - b. No matters caused the ICPA to believe the specified data should be adjusted.
- E.** After the initial submission of items specified in subsection (D), the owner or operator shall send updated information to the State Mine Inspector within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subsection (D).
- F.** If the owner or operator no longer meets the requirements of subsection (B) or (C), the owner or operator shall send notice of intent to establish alternative financial assurance to the State Mine Inspector. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternative financial assurance that meets the requirements of the Act and this Chapter within 120 days after the end of the fiscal year.
- G.** The State Mine Inspector may, based on reasonable belief that the owner or operator may no longer meet the requirements of subsection (B) or (C), require reports of financial condition by written request, at any time, from the owner or operator, in addition to those specified in subsection (D). If the State Mine Inspector makes a written finding, on the basis of the reports or other information, that the owner or operator no longer meets the requirements of subsection (B) or (C), the owner or operator shall provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this written finding.
- H.** The State Mine Inspector may disallow use of this test on the basis of qualifications in the opinion expressed by the ICPA in the report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The State Mine Inspector will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this disallowance.
- I.** The owner or operator is no longer required to submit the items specified in subsection (C) when:
 1. An owner or operator substitutes alternate financial assurance that meets the requirements of the Act and this Chapter; or
 2. The State Mine Inspector releases the owner or operator's financial assurance under the Act and this Chapter.
- J.** An owner or operator may meet the requirements of this Section by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a group of legal entities which are controlled through stock ownership by a common parent corporation, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (A) through (I) and shall comply with the terms of the guarantee. The certified copy of the guarantee shall accompany the items sent to the State Mine Inspector as specified in subsection (C). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the owner or operator, this letter shall describe this substantial business relationship and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:
 1. If the owner or operator fails to perform the reclamation covered by the guarantee under the approved reclamation plan, the guarantor will do so or establish a trust fund as specified in the Act and this Chapter in the name of the owner or operator.
 2. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the State Mine Inspector. Cancellation may not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the State Mine Inspector, as evidenced by the return receipts.
 3. If the owner or operator fails to provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the owner or operator and the State Mine Inspector receive notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide the alternate financial assurance in the name of the owner or operator.

R11-3-812. Annuities

- A.** An owner or operator may provide the State Mine Inspector an annuity as financial assurance for reclamation. The annuity shall name the state of Arizona as the beneficiary. The financial institution, if any, shall be licensed to do business in the state of Arizona. Any incremental or annual payment shall be in an amount adequate to pay all costs of reclamation for land disturbed in that incremental or annual period.

- B.** The owner or operator may cancel the annuity only if alternate financial assurance that meets the requirements of the Act and this Chapter is provided.

R11-3-813. Bonding Pools

An owner or operator may provide the State Mine Inspector with a certificate of participation in a reclamation bond pool as financial assurance for reclamation. The surety bond pool certificate shall be an indemnity agreement in a sum certain payable to the state of Arizona, executed by the surety bond pool organization of which the owner or operator is a member and shall be supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Arizona.

R11-3-814. Final Action on Financial Assurance Mechanisms

The State Mine Inspector shall take final action on the financial assurance mechanism within 30 days after its receipt.

R11-3-815. Incremental Financial Assurance

If financial assurance is provided on an incremental basis as permitted under A.R.S. § 27-1295, the amount shall be equal to or greater than the estimated cost of reclamation for surface disturbances created during that increment.

R11-3-816. Financial Assurance Funding

Except where limited by statute or this Article, financial assurance provided by the owner or operator may be funded by the owner, the operator, by any third party, or by any combination of persons or entities.

R11-3-817. Limited Individual Financial Assurance for Single Unit

Whenever two or more persons or entities are named as owners or operators in a single exploration operation or an aggregate mining unit, the owners or operators may limit the scope of their individual financial assurances so long as their financial assurances, in total, assure performance of all conditions and requirements of the Act, this Chapter, and the approved reclamation plan.

R11-3-818. Application for Release of Financial Assurance

- A.** The financial assurance shall not be released until all conditions and requirements of the Act and this Chapter have been satisfied.
- B.** Within 60 days after receiving a request for release of a financial assurance, the State Mine Inspector, or a designated agent, shall inspect the exploration operation or aggregate mining unit to determine whether the owner or operator has fulfilled the requirements of the approved reclamation plan and either:
1. Approve the release of the financial assurance or portion thereof; or
 2. Notify the owner and operator in writing that the financial assurance or portion thereof will not be released, the reasons why, and the measures necessary to satisfy the requirements of the approved reclamation plan.
- C.** If a request to release is denied, the owner or operator may appeal the decision as provided by A.R.S. Title 41, Chapter 6, Article 10.
- D.** The 60 days within which the State Mine Inspector, or a designated agent, shall respond to a request to release a financial assurance may be extended by mutual agreement if conditions prevent an inspection of the reclaimed land.
- E.** The State Mine Inspector shall release the transferor's financial assurance mechanism upon receipt of alternate financial assurance that meets the requirements of the Act and this Chapter from the transferee.

R11-3-819. Forfeiture Criteria/Forfeiture of Financial Assurance

- A.** A financial assurance mechanism filed with the State Mine Inspector or state agency is subject to forfeiture if any of the following exist:
1. An exploration operation or aggregate mining unit has been completed, abandoned, or temporarily closed for a period greater than allowed by the Act or this Chapter without initiating reclamation;
 2. An exploration operation or aggregate mining unit has been completed, abandoned, or temporarily closed for a period greater than allowed by the Act or this Chapter and the owner or operator stops or suspends any ongoing reclamation as determined by the State Mine Inspector;
 3. The operator stops conducting business in the state of Arizona and does not transfer the approved reclamation plan and financial assurance to a new operator under A.R.S. § 27-1228.
 4. The operator stops conducting business due to insolvency, bankruptcy, receivership, or misconduct, under A.R.S. § 27-1205;
 5. The operator fails to comply with the conditions of the financial assurance mechanism; or
 6. The owner or operator fails to reclaim the surface disturbances under the approved reclamation plan, the Act, or this Chapter.
- B.** Where the financial assurance has been filed with an agency of the federal government, the State Mine Inspector shall notify that agency and request forfeiture action to be taken.

R11-3-820. Notification of Forfeiture Action

At least 30 days before exercising forfeiture, the State Mine Inspector shall notify both the owner and operator and all princi-

Notices of Proposed Rulemaking

pals and sureties by certified mail (return receipt requested), express mail (with a receipt), and hand delivery the financial assurance is subject to forfeiture and advise the owner and operator of the right to a hearing under A.R.S. Title 41, Chapter 6, Article 10.

R11-3-821. Avoidance of Forfeiture

The State Mine Inspector shall advise both the owner and operator and all principals and sureties subject to R11-3-819 of the conditions under which forfeiture may be avoided. The conditions may include:

1. An agreement by the owner and operator or another party to perform reclamation operations under a compliance schedule, determined by the State Mine Inspector, which meets the conditions of the Act, this Chapter, and the approved reclamation plan.
2. A surety bond to complete the reclamation or a portion of the reclamation applicable to the financial assurance increment if the surety can show an ability to complete the reclamation under the Act, this Chapter, and the approved reclamation plan.

R11-3-822. Notice of Exercise of Forfeiture

The State Mine Inspector shall provide written notice by certified mail (return receipt requested) of any exercise of forfeiture of financial assurance to both the owner and operator and all principals and sureties.

R11-3-823. Full Release of Financial Assurance

The full release of financial assurance pursuant to A.R.S. § 27-1296(B), or as otherwise provided by the Act and this Chapter, shall be evidence the owner or operator has reclaimed as required by the Act, this Chapter, and the approved reclamation plan.